GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED BY
THE FIRST EXTRAORDINARY SESSION OF THE
FIFTY-FIRST IDAHO LEGISLATURE

Convened July 27, 1992
Adjourned July 28, 1992

Idaho Official Directory and Roster of State Officials and Members of State Legislature Follows the Index.

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

Printed by The Caxton Printers, Ltd.
Caldwell, Idaho

PROCLAMATION

WHEREAS, there is uncertainty regarding the extent to which gambling is permitted by the Constitution and laws of the State of Idaho; and

WHEREAS, there is a need to clarify what games of chance may be conducted by charitable organizations; and

WHEREAS, there is a need to clarify the legality of merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations; and

WHEREAS, there is public concern about the effect that casino-type gambling, including electronic versions thereof, would have on the State of Idaho; and

WHEREAS, casino gambling activities have presented other states with serious challenges to state government in such areas as law enforcement, health and welfare, employment, and land use; and

WHEREAS, it is in the public interest for the voters to clarify the extent to which gambling and gaming activity are permitted in the State of Idaho; and

WHEREAS, Article 4, Section 9, of the Constitution of the State of Idaho empowers the Governor, on extraordinary occasions, to convene the Legislature by proclamation; and

WHEREAS, the issue of whether to provide the electorate the opportunity to vote in the 1992 general election to clarify the extent to which gambling and gaming activities are permitted in the State of Idaho constitutes such an extraordinary occasion;

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do by this Proclamation convene the 51st Idaho Legislature in Extraordinary Session in the Legislative Chambers at the Capitol in Boise City, Ada County, Idaho, at the hour of 8:00 a.m., on the 27th day of July, 1992, to:

1. consider and enact legislation clarifying the extent to which gambling and gaming activities are permitted in the State of Idaho;

2. consider and propose constitutional amendments clarifying the extent to which gambling and gaming activities are permitted in the State of Idaho; and

3. consider and enact such legislation as may be necessary to submit any such proposed constitutional amendments to the voters at the 1992 general election.

The subjects authorized for consideration by the Extraordinary

Session of the Legislature by this Proclamation shall not includ elimination of pari-mutuel wagering or the state lottery.

The Extraordinary Session of the Legislature convened by thi Proclamation shall have no power to legislate on any subjects othe than those specified herein.

I HEREBY DIRECT AND REQUIRE that a copy of this Proclamation b delivered to the Lieutenant Governor, to each of the members of th 51st Idaho Legislature and to the Constitutional Officers of the Stat Government at the earliest possible time.

IN WITNESS WHEREOF, I have hereunto se my hand and caused to be affixed th Great Seal of the State of Idaho, a Boise, the Capital, the 13th day of July in the year of our Lord nineteen hundre ninety-two, and of the Independence o the United States of America the two hun dred seventeenth, and of the Statehood o Idaho the one hundred third.

/s/ Cecil D. Andrus
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

CHAPTER 1
(H.B. No. 2)

AN ACT
RELATING TO PROPOSED CONSTITUTIONAL AMENDMENTS; PROVIDING THAT IN 1992, THE LEGISLATIVE COUNCIL SHALL PREPARE A BRIEF STATEMENT OF MEANING AND PURPOSE OF A PROPOSED CONSTITUTIONAL AMENDMENT AND SHALL PREPARE A CONCISE PRESENTATION OF THE MAJOR ARGUMENTS ADVANCED BY PROPONENTS AND OPPONENTS NOT LATER THAN AUGUST 14, 1992, AND FILE THE SAME WITH THE SECRETARY OF STATE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In 1992 only, if the legislature shall have directed the submission of a proposal to amend the constitution of the state of Idaho to the electors, the legislative council shall, not later than August 14, 1992, prepare and file with the secretary of state a dossier containing the following:

(1) a brief statement setting forth in simple, understandable language the meaning and purpose of the proposed amendment and the result to be accomplished by such amendment. The statement shall be included in the publications of the proposed amendment required by law of the secretary of state, and shall be printed on the official ballot by which such proposed amendment is submitted to the electors; and

(2) a concise presentation of the major arguments advanced by the proponents and opponents of the proposed amendment designed to represent as fairly as possible the arguments relative to the proposed amendment. In preparing such arguments, the legislative council may seek the advice and suggestions of known supporters and opponents or any other persons or groups and may, in its sole discretion, use any of the suggested arguments. If any such suggestions are utilized by the legislative council, no recognition shall be given to the persons or groups which submitted the argument. The arguments shall be published in the publications required by law of the secretary of state, but shall not appear on the ballot by which such proposed amendment is submitted to the electors.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved July 29, 1992.

CHAPTER 2
(H.B. No. 3)

AN ACT

RELATING TO BINGO GAMES, RAFFLES AND GAMBLING; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 77, TITLE 67, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE CONDITIONS WHEN BINGO GAMES AND RAFFLES CAN BE CONDUCTED LAWFULLY AND TO DEFINE TERMS; REPEALING SECTIONS 18-3801 AND 18-3802, IDAHO CODE; AMENDING TITLE 38, CHAPTER 18, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 18-3801 AND 18-3802, IDAHO CODE, TO DEFINE GAMBLING, TO PROHIBIT GAMBLING AND TO PROVIDE PENALTIES; DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES, AND PROVIDING A SUNSET CLAUSE FOR SECTION 1.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 77, Title 67, Idaho Code, and to read as follows:

CHAPTER 77
BINGO GAMES AND RAFFLES

67-7701. PURPOSE AND POLICY. It is hereby declared that all charitable bingo games and charitable raffles in Idaho as authorized by the constitution of the state of Idaho and in this chapter shall be legal. The intent of this chapter is to maintain the status quo regarding bingo games and raffles until the legislature has had a chance to affirmatively act on the subject of regulating bingo games and raffles conducted by qualified charitable organizations.

67-7702. BINGO GAMES AND RAFFLES. It is lawful for a qualified charitable organization to periodically conduct bona fide fund-raising bingo games and raffles. The state lottery commission is authorized to adopt regulations to prohibit expansion of bingo or raffle activities pending legislative regulation contemplated in section 67-7701, Idaho Code.

67-7703. DEFINITIONS. As used in this chapter:

(1) "Bingo game" means a specific game played with individual cards having numbered squares ranging from one (1) to seventy-five (75), in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers. Bingo shall not include "instant bingo" which is a game played by the selection of one (1) or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card.

(2) "Qualified charitable organization" means an organization that has been in continuous existence in the state of Idaho for at least one (1) year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the United States internal revenue code, as amended, and is exempt

from income taxation under title 63, Idaho Code, as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad. If the organization has local branches or chapters, the term "qualified charitable organization" means the local branch or chapter operating the bingo game or raffle.

(3) "Raffle" means a game in which the prize is won by random selection of the name or number of one (1) or more persons purchasing chances.

SECTION 2. That Sections 18-3801 and 18-3802, Idaho Code, be, and the same are hereby repealed.

SECTION 3. That Chapter 38, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-3801, Idaho Code, and to read as follows:

18-3801. GAMBLING DEFINED. "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, the operation of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat or keno, but does not include:

(1) Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entrants; or

(2) Bona fide business transactions which are valid under the law of contracts; or

(3) Games that award only additional play; or

(4) Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; or

(5) Other acts or transactions now or hereafter expressly authorized by law.

SECTION 4. That Chapter 38, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-3802, Idaho Code, and to read as follows:

18-3802. GAMBLING PROHIBITED. (1) A person is guilty of gambling if he:

(a) Participates in gambling; or

(b) Knowingly permits any gambling to be played, conducted or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part.

(2) Gambling is a misdemeanor.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Sections 2, 3 and 4 of this act shall be in full force and effect on and after August 15, 1992. Section 1 of this act shall be in full force and effect on after the date of adoption of House Joint Resolution No. 4, First Extraordinary Session, Fifty-first

Idaho Legislature, amending Article III, Section 20 of the Constitution of the State of Idaho by the electorate of the State of Idaho at the 1992 general election as required by law.

Section 1 of this act (Chapter 77, Title 67, Idaho Code) is repealed on and after June 30, 1993.

Approved July 29, 1992.

CHAPTER 3
(H.B. No. 4)

AN ACT

RELATING TO THE DROUGHT CONDITIONS IN THE STATE OF IDAHO; DECLARING LEGISLATIVE INTENT TO PROVIDE EMERGENCY AUTHORITY TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES, PROVIDING FOR TEMPORARY CHANGES IN THE POINT OF DIVERSION, PLACE AND PURPOSE OF USE OF WATER, AND SPECIFYING CONDITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. The legislature finds and declares that water conditions throughout the state of Idaho are extremely critical at the present time due to deficient precipitation during the winter and spring of 1991-1992 and similar below-average moisture received during the previous five seasons. As a result, the water supply available to Idaho's important agricultural industry and other water uses is inadequate to sustain normal operations. It is, therefore, necessary to provide emergency authority to permit temporary changes of point of diversion, place and purpose of use of valid existing water rights when the director of the department of water resources determines that such change(s) can be accomplished in accordance with the provisions of this section.

Application for a temporary change shall be made upon forms provided by the department of water resources and shall be subject to an application fee of fifty dollars ($50.00) per application.

No notice of the proposed change is required to be published pursuant to section 42-222(1), Idaho Code, and the director of the department of water resources is not required to make findings as provided in said section. A temporary change may be approved upon completion of the application form and payment of the filing fee and a determination by the director of the department of water resources that the proposed change can be properly administered and the director of the department of water resources has no information that the change will injure any other water right. If the water right to be changed is administered by a watermaster within a water district, the director of the department of water resources shall obtain the recommendations of the watermaster before approving the application.

All temporary changes approved pursuant to this act shall expire on November 1, 1992, and thereafter the water right shall revert to the point of diversion and place of use existing prior to the temporary change. Nothing herein shall be construed to permit a new well to

be drilled as a new point of diversion.

The recipient of an approved temporary change issued pursuant to this act shall assume all risk that the diversion and use of the water may cause injury to other water rights, that the change constitutes an enlargement in use of the original right, that the use is not consistent with the conservation of Idaho's water resources and that such use is not in the local public interest. Any applicant for a temporary change who is aggrieved by the director of the department of water resources' denial of a temporary change pursuant to this act is entitled to request a hearing and to obtain judicial review pursuant to section 42-1701A, Idaho Code.

Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses which normally have a full water supply except for the drought condition. Temporary changes may not be approved for new uses or to allow expansion of the use of water under existing water rights.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved July 29, 1992.

HOUSE JOINT RESOLUTIONS

(H.J.R. No. 4)

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO SECTION 20, ARTICLE III, OF THE CONSTITUTION OF THE STATE OF IDAHO, RELATING TO GAMBLING; TO PROVIDE THAT GAMBLING IS CONTRARY TO PUBLIC POLICY AND IS STRICTLY PROHIBITED EXCEPT FOR A STATE LOTTERY WHICH IS AUTHORIZED BY THE STATE OF IDAHO, PARI-MUTUEL BETTING, BINGO AND RAFFLE GAMES THAT ARE OPERATED BY QUALIFIED CHARITABLE ORGANIZATIONS IN THE PURSUIT OF CHARITABLE PURPOSES IF THE LOTTERY, PARI-MUTUEL BETTING, CHARITABLE BINGO OR RAFFLE GAMES ARE CONDUCTED IN CONFORMITY WITH ENABLING LEGISLATION; TO PROHIBIT THE EMPLOYMENT OF ANY GAME THAT IS TYPICAL OF CASINO GAMBLING INCLUDING, BUT NOT LIMITED TO BLACKJACK, CRAPS, ROULETTE, POKER, BACARRAT, KENO AND SLOT MACHINES, AND TO PROHIBIT THE EMPLOYMENT OF ANY ELECTRONIC OR ELECTROMECHANICAL IMITATION OR SIMULATION OF ANY FORM OF CASINO GAMBLING; TO PROVIDE THAT THE LEGISLATURE SHALL PROVIDE BY LAW PENALTIES FOR VIOLATIONS OF THIS CONSTITUTIONAL AMENDMENT; AND TO PROVIDE THAT CERTAIN MERCHANT PROMOTIONAL CONTESTS AND DRAWINGS AND CERTAIN GAMES ARE NOT GAMBLING AND ARE NOT PROHIBITED BY THIS CONSTITUTIONAL AMENDMENT; STATING THE QUESTION TO BE SUBMITTED TO THE ELECTORATE; DIRECTING THE LEGISLATIVE COUNCIL TO PREPARE THE STATEMENTS REQUIRED BY LAW; AND DIRECTING THE SECRETARY OF STATE TO PUBLISH THE AMENDMENT AND ARGUMENTS AS REQUIRED BY LAW.

Be It Resolved by the Legislature of the State of Idaho:

SECTION 1. That Section 20, Article III, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 20. GAMBLING ~~NOT-TO-BE--AUTHORIZED~~ PROHIBITED. (1) ~~No--game-of-chance,-lottery,-gift-enterprise-or-gambling shall-be-authorized-under-any-pretense--or--for--any--purpose whatever,~~ Gambling is contrary to public policy and is strictly prohibited except for the following:

a. A state lottery which is authorized by the state if conducted in conformity with ~~law~~ enabling legislation; and

b. Pari-mutuel betting if conducted in conformity with ~~law~~ enabling legislation; and

c. ~~Charitable~~ Bingo and raffle games ~~of--chance--which~~ that are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in

conformity with ~~law~~ enabling legislation.

(2) No activities permitted by subsection (1) shall employ any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat, keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling.

(3) The legislature shall provide by law penalties for violations of this section.

(4) Notwithstanding the foregoing, the following are not gambling and are not prohibited by this section:

a. Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; and

b. Games that award only additional play.

SECTION 2. The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows:

"Shall Section 20, Article III, of the Constitution of the State of Idaho be amended:

(1) To clarify that gambling is contrary to public policy and is strictly prohibited except for a state lottery which is authorized by the state of Idaho, pari-mutuel betting, and bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes if the lottery, pari-mutuel betting, and charitable bingo or raffle games are conducted in conformity with enabling legislation;

(2) To prohibit the employment of any game that is typical of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat, keno and slot machines, and to prohibit the employment of any electronic or electromechanical imitation or simulation of any form of casino gambling;

(3) To provide that the legislature shall provide by law penalties for violations of this constitutional amendment; and

(4) To provide that: (i) merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations if prizes are awarded without consideration being charged to participants; and (ii) games that award only additional play are not gambling and shall not be prohibited by this constitutional amendment?".

SECTION 3. The Legislative Council is directed to prepare the statements required by law and file the same.

SECTION 4. The Secretary of State is hereby directed to publish this proposed constitutional amendment and arguments as required by law.

Passed by the House July 27, 1992.
Passed by the Senate July 28, 1992.

CERTIFICATE OF SECRETARY OF STATE

UNITED STATES OF AMERICA)
) ss.
STATE OF IDAHO)

I, PETE T. CENARRUSA, Secretary of the State of Idaho, do hereby certify that the foregoing printed pages contain true, full, and correct and literal copies of all the general laws and resolution passed by the Fifty-first Legislature of the State of Idaho, First Extraordinary Session thereof, which convened July 27, 1992, and which adjourned July 28, 1992, as they appear in the enrolled acts and resolutions on file in this office, all of which are published by authority of the Laws of the State of Idaho.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise City, the Capital of Idaho, this 29th day of July, 1992.

Pete T. Cenarrusa
Secretary of State

When errors appear in the enrolled bills received from the Legislature at the office of the Secretary of State, this office has no authority to correct them.

CHAPTER 1
(H.B. No. 35)

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES TO THE INTERNAL REVENUE CODE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 199~~2~~3.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993.

Approved February 19, 1993.

CHAPTER 2
(H.B. No. 36)

AN ACT

RELATING TO THE IDAHO INCOME TAX INVESTMENT TAX CREDIT; AMENDING SECTION 63-3029B, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CLARIFY THE DOCUMENTATION REQUIREMENTS RELATING TO QUALIFIED INVESTMENTS, TO CLARIFY THE ELECTION RELATING TO PROPERTY USED BOTH INSIDE AND OUTSIDE IDAHO IN ITS FIRST YEAR AS A QUALIFYING INVESTMENT, TO CLARIFY REFERENCES TO CERTAIN SECTIONS OF THE FEDERAL INTERNAL REVENUE CODE SINCE REPEALED OR AMENDED, AND TO ELIMINATE ANY REQUIREMENT OF RECAPTURE OF THE INVESTMENT TAX CREDIT RELATING TO PROPERTY SUBJECT TO AN INVOLUNTARY CONVERSION UNDER SECTION 1033 OF THE INTERNAL REVENUE CODE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3029B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

(a) the tax credit carry-overs; and

(b) the tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section "qualified investment" means certain depreciable property which:

(a) is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the internal revenue code subject to the limitations provided for certain regulated companies in section 46(f) of the internal revenue code and is not purchased as replacement for existing property for reasons other than technical obsolescence and is not a motor vehicle under eight thousand (8,000) pounds gross weight;

(b) is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) has a situs in Idaho.

(4) Notwithstanding the provisions of subsections (1) and (2), the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer.

(5) If the sum of credit carry-overs from the credit allowed by subsection (2) and the amount of credit for the taxable year from the credit allowed by subsection (2) exceed the limitation imposed by subsection (4) for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carry-over to the five (5) succeeding taxable years. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the qualified investment property for which the unused credit was granted still maintains Idaho situs.

(6) Any ~~recomputation~~ recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of its useful life, shall be determined according to ~~section 47~~ the applicable recapture provisions of the internal revenue code. No recapture of the credit allowed by subsection (2) of this section shall be required in regard to property ceasing to qualify by reason of an involuntary conversion within the meaning of section 1033 of the internal revenue code.

(7) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the internal revenue code shall be disregarded.

(8) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. No credit or carry-over of credit is permitted under this section if the credit

or carry-over relates to property that does not have a situs in Idaho during the taxable year for which the credit or carry-over is claimed. The Idaho situs of ~~rolling-stock-and-movable~~ property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the property.

(9) In the case of property used both in and outside Idaho, the taxpayer ~~may~~, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one, but only one, of the following ways:

(a) the amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year. In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) the total investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service shall be multiplied by a factor equal to the Idaho property factor determined pursuant to section 63-3027(j) through (l), Idaho Code, for the same year.

(10) Only for the purposes of subsections (3)(a) and (7) of this section, references to sections of the "internal revenue code" mean the sections referred to as they existed in the internal revenue code of 1986 prior to November 5, 1990.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993.

Approved February 19, 1993.

CHAPTER 3
(H.B. No. 37)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3022, IDAHO CODE, RELATING TO DIVIDENDS RECEIVED BY CORPORATIONS TO REQUIRE ADDING BACK CERTAIN DIVIDENDS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES, TO PERMIT DEDUCTION OF "DIVIDEND GROSS UP" INCLUDED IN FEDERAL TAXABLE INCOME UNDER SECTION 78 OF THE INTERNAL REVENUE CODE, AND TO

REPEAL THE DEDUCTION FOR DIVIDENDS PAID BY CERTAIN INSTATE CORPORATIONS; AMENDING SECTION 63-3024A, IDAHO CODE, TO UPDATE REFERENCES TO THE INTERNAL REVENUE CODE; AMENDING SECTION 63-3030, IDAHO CODE, RELATING TO FILING REQUIREMENTS TO CORRECT REFERENCES TO THE INTERNAL REVENUE CODE AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 63-3030A, IDAHO CODE, RELATING TO WRITS OF MANDATE TO COMPEL FILING OF RETURNS, TO EXPAND THE TIME FOR RETURN OF THE WRIT FROM TEN TO TWENTY-EIGHT DAYS; AMENDING SECTION 63-3033, IDAHO CODE, RELATING TO EXTENSIONS OF TIME WITHIN WHICH TO FILE INCOME TAX RETURNS TO CLARIFY THE TERM "TOTAL TAX DUE"; AMENDING SECTION 63-3074, IDAHO CODE, TO CLARIFY THE LIMITATION ON LAWSUITS ALLEGING WRONGFUL COLLECTION OF TAXES; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. TAXABLE INCOME. The term "taxable income" means "taxable income" as defined in section 63 of the Internal Revenue Code, adjusted as provided in this chapter:

(a) Add interest and dividends received or accrued during the taxable year from foreign securities and from securities issued by states and other political subdivisions, other than those issued by the state of Idaho, its cities and political subdivisions, exempt from federal income tax under the Internal Revenue Code, less applicable amortization.

(1) In the case of a corporation whose income is taxable under this chapter, no deduction shall be allowed for interest on indebtedness incurred or continued to purchase after January 1, 1983, or to carry obligations acquired after January 1, 1983, the interest of which is wholly exempt from the taxes imposed under this chapter. The amount of interest on indebtedness thus incurred or continued shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's average adjusted basis of the obligations mentioned in the preceding sentence bears to such average adjusted basis for all assets of the taxpayer, or, at the option of the taxpayer, an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's interest income from the obligations mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year.

(2) In the case of a corporation whose income is computed pursuant to section 63-3027, Idaho Code, the interest expense deductible shall be an amount equal to interest and dividend income subject to apportionment, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income not subject to apportionment. Interest expense not included in the preceding sentence shall be directly offset against interest and

dividend income not subject to apportionment. This provision shall not apply to dividend income excluded pursuant to section 63-3027C(c) and (e), Idaho Code.

(b) Add any state taxes, measured by net income, paid or accrued during the taxable year adjusted for state tax refunds used in arriving at taxable income as defined in section 63 of the Internal Revenue Code.

(c) Add the net operating loss deduction used in arriving at taxable income as defined in section 63 of the Internal Revenue Code.

(d) (1) A net operating loss for any taxable year commencing on or after January 1, 1983, but prior to January 1, 1990, shall be a net operating loss carryover to each of the ten (10) taxable years following the taxable year of such loss; provided, however, such net operating loss shall be subtracted in each succeeding year in order but the total subtracted in the succeeding taxable years shall not exceed the total of such net operating loss; provided, further, that a net operating loss not to exceed one hundred thousand dollars ($100,000) arising in a taxable year commencing on or after January 1, 1983, but prior to January 1, 1990, may, at the election of the taxpayer, be carried back to the three (3) immediately preceding taxable years, and if such loss is not entirely absorbed by the income of those years, the amount of loss not exhausted may be subtracted from taxable income arising in the next ten (10) years succeeding the taxable year in which the loss arises in order until exhausted. A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed one hundred thousand dollars ($100,000) to the three (3) immediately preceding taxable years, and any loss not entirely absorbed by the income of those years may be subtracted from taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in the order until exhausted. At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3)(c) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the regulations of the state tax commission and once made is irrevocable for the year in which it is made. In the event that the taxpayer elects to carryback any loss arising in a year commencing on or after January 1, 1983, but prior to January 1, 1990, any loss not exhausted may be subtracted from taxable income arising in the next succeeding ten (10) taxable years in order until exhausted.

(2) Net operating losses incurred by a corporation during a year in which such corporation had no Idaho business situs may not be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

(e) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), ~~and~~ 244, 245 and 246A of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(f) In the case of a corporation, subtract an amount ~~equal to the percentage~~ determined under section ~~246(b)(3)~~ 78 of the Internal Revenue Code ~~of the amount received during the~~ to be taxable year as dividends~~, as limited by the rules of section 246(b)(1) of the Internal Revenue Code, from any corporation which has shown to the satisfaction of the state tax commission that more than fifty per cent (50%) of its taxable income for the taxable year immediately preceding the declaration of such dividends was taxable by the state of Idaho under the provisions of this act~~.

(g) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income, as defined by section 63 of the Internal Revenue Code.

(h) In the case of a corporation with more than fifty per cent (50%) of its income taxable within this state, the salary, fee or other compensation of its nonresident officers or directors shall be treated as income from sources within the state. Whether or not any personal services have been performed by such nonresident officers or directors in this state, they shall be deemed to have a business situs in this state. If such salary, fee or other compensation is not reported to this state as income, such corporation shall not deduct as part of its expenses for the taxable year any part of such salary, fee or other compensation in computing taxable income. When the salary, fee or other compensation paid to such nonresident officer is reported to this state as income by such nonresident officer, it shall be apportioned by applying to the total of such income the apportionment factor of the corporation paying the salary, fee or other compensation, as such factor is reported on the corporation's income tax return computed pursuant to section 63-3027, Idaho Code, or as subsequently modified. Provided, however, reasonable compensation paid to such nonresident officers or directors for personal services actually performed outside the state of Idaho shall not be included as income earned from Idaho sources.

(i) For the purpose of determining the taxable income of the beneficiary of a trust or of an estate, distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section. In the event that a nonresident beneficiary of a trust or estate fails to file an Idaho income tax return reporting all or any part of distributable net income taxable in Idaho or fails to pay any tax due thereon, the trust or estate making the payment or distribution shall be taxable upon the amount of such distribution or payment at the rates established by section 63-3024, Idaho Code.

(j) In the case of an individual who is on active duty as a full time officer, enlistee or draftee, with the armed forces of the United States, which full time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid for services performed outside this state by the armed forces of the United States, only to the extent such income is included in "taxable income," as defined in section 63 of the Internal Revenue Code, and provided that appropriate adjustments shall be made in his standard deduction amount and exemptions as described in sec-

tion 63-3027A, Idaho Code.

(k) In the case of a corporation, add any capital loss deducted which loss was incurred during any year in which such corporation had no Idaho business situs. In the case of persons, other than corporations, add any capital loss deducted which was incurred in business activities not taxable by Idaho at the time such loss was incurred. In the case of a corporation having income from Idaho sources and having elected to file federal income tax returns thereon pursuant to Subchapter-S of the Internal Revenue Code, or a partnership having income from Idaho sources, salaries, wages, fees, and other compensation paid to nonresident shareholders or partners, and the items of income, loss, deduction, and credit allocated to each nonresident shareholder or partner shall be treated as having sources within the state. Whether or not any personal services have been performed in this state by such nonresident shareholders or partners, they shall be deemed to have a business situs in this state. When the salaries, wages, fees, and other compensations paid to such nonresident shareholders or partners or items of income, loss, deduction, and credit, or allocated to such shareholders or partners is reported to this state as taxable income pursuant to this subsection, such income shall be apportioned by applying to the total of such income the apportionment factor of the corporation or partnership. The apportionment factor of the corporation or partnership shall be computed pursuant to the provisions of section 63-3027, Idaho Code. If such items of income, loss, deduction, or credit, salaries, wages, fees or other compensation are not reported to this state by the nonresident shareholders or partners, such corporation or partnership shall report the same to this state and be taxable thereon at the corporate rate. Provided, however, reasonable compensation paid to such nonresident shareholders or partners for personal services actually performed outside the state of Idaho shall not be included as income earned from Idaho sources. In computing the income taxable to the corporation or partnership under this subsection, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (d) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(l) In the case of natural persons, there shall be allowed as deductions from gross income either (1) or (2) at the option of the taxpayer:

(1) a. The standard deduction as defined by section 63, Internal Revenue Code, plus contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus

b. Itemized expenditures of not to exceed one thousand dollars ($1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56,

title 39, Idaho Code; in order for the deduction under this paragraph to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance, and such expenditures must not have been previously subtracted in arriving at taxable income.

(2) a. Itemized deductions as defined in section 63 of the Internal Revenue Code except state income taxes as specified in section 164 of the Internal Revenue Code, plus

b. Contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus

c. Itemized expenditures of not to exceed one thousand dollars ($1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56, title 39, Idaho Code; in order for the deduction under this paragraph c. to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance, and such expenditures must not have been previously subtracted in arriving at taxable income.

(m) Deduct any amounts added to gross income under section 87 of the Internal Revenue Code for tax credits allowable to the taxpayer under section 40 of the Internal Revenue Code.

(n) Add the taxable amount of any lump sum distribution deducted from gross income pursuant to section 402(e)(3) of the Internal Revenue Code. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(o) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(p) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(q) Add the amount claimed as a credit under section 63-3029G, Idaho Code, if previously deducted in arriving at taxable income.

SECTION 2. That Section 63-3024A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3024A. CREDITS AND REFUNDS. (a) Any resident individual not entitled to the credit allowed in subsection (b)(1), who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of fifteen dollars ($15.00) for each personal exemption for which a deduction is permitted by section 151(b) and (c) of the Internal Revenue Code~~, as that section appeared on December 31, 1964,~~ if such deduction is claimed on the taxpayer's Idaho income tax

return. If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer.

(b) (1) A resident individual who has reached his sixty-fifth birthday before the end of his taxable year, who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of thirty dollars ($30.00) for each personal exemption representing himself, a spouse over the age of sixty-five (65), or a dependent over the age of sixty-five (65), but shall be allowed a credit against taxes due under the Idaho income tax act equal to fifteen dollars ($15.00) for each personal exemption representing a spouse or dependent under the age of sixty-five (65). If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer.

(2) A resident individual who has reached his sixty-fifth birthday and is not required by law to file an Idaho income tax return and who has received no credit or refund under any other subsection of this section, shall be entitled to a refund of thirty dollars ($30.00). Any refund shall be paid to such individual only upon his making application therefor at such time and in such manner as may be prescribed by the state tax commission.

(c) A resident individual of the state of Idaho who is:

(i) blind, or

(ii) a disabled American veteran of any war engaged in by the United States, whose disability is recognized as a service connected disability of a degree of ten per cent (10%) or more, or who is in receipt of a pension for nonservice connected disabilities, in accordance with laws and regulations administered by the United States veterans administration, substantiated by a statement as to status signed by a responsible officer of the United States veterans administration, or

(iii) over sixty-two (62) years of age, and has been allowed none, or less than all, of the credit provided by subsection (a) or subsection (b) of this section, shall be entitled to a payment from the refund fund in an amount equal to fifteen dollars ($15.00), or the balance of his unused credit, whichever is less, upon making application therefor at such time and in such manner as the state tax commission may prescribe.

(d) Any part-year resident entitled to a credit under this section shall receive a proportionate credit, in the manner above provided, reflecting the part of the year in which he was domiciled in this state.

(e) No credit or refund may be claimed for an exemption which

represents a person who has himself filed an Idaho income tax return claiming a deduction for his own personal exemption, and in no event shall more than one (1) taxpayer be allowed a credit or refund for the same exemption, or under more than one (1) subsection of this section.

(f) The refunds authorized by this section shall be paid from the state refund fund in the same manner as the refunds authorized by section 63-3067, Idaho Code.

(g) An application for any refund which is due and payable under the provisions of this section must be filed with the state tax commission within three (3) years of:

(i) the due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return, or

(ii) the 15th day of April of the year following the year to which the application relates if the applicant is not required to file a return.

SECTION 3. That Section 63-3030, Idaho Code, be, and the same is hereby amended to read as follows:

63-3030. PERSONS REQUIRED TO MAKE RETURNS OF INCOME. (a) Returns with respect to taxes measured by income in this act shall be made by the following:

(1) (A) Every resident individual having for the current taxable year a gross income, as defined by section 61(a) of the Internal Revenue Code, of one thousand dollars ($1,000) or more, except that a return shall not be required of an individual (other than an individual referred to in section 6012(a)(1)(C) of the Internal Revenue Code)--

(i) who is not married (determined by applying section 7703 of the Internal Revenue Code), who is not a surviving spouse (as defined in section 2(a) of the Internal Revenue Code) and for the taxable year has a gross income of less than three thousand three hundred dollars ($3,300), or

(ii) who is a surviving spouse (as defined in section 2(a) of the Internal Revenue Code) and for the taxable year has a gross income of less than four thousand four hundred dollars ($4,400), or

(iii) who is entitled to make a joint return under section 6013 of the Internal Revenue Code and whose gross income, when combined with the gross income of his spouse is, for the taxable year, less than five thousand four hundred dollars ($5,400) but only if such individual and his spouse, at the close of the taxable year, had the the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c) of the Internal Revenue Code.

(B) The three thousand three hundred dollars ($3,300) amount specified in subparagraph (A)(i) shall be increased to four thousand three hundred dollars ($4,300) in the case of an

individual entitled to an additional standard deduction under section 63(f)(1) of the Internal Revenue Code, and the five thousand four hundred dollars ($5,400) amount specified in subparagraph (A)(iii) shall be increased by one thousand dollars ($1,000) for each individual entitled to an additional standard deduction under section 63(f)(1) of the Internal Revenue Code.

(2) An individual who is referred to in section 6012(a)(1)(C) of the Internal Revenue Code, who has income other than earned income of one thousand dollars ($1,000) or more, or who has gross income of three thousand three hundred dollars ($3,300) or more for a taxable year.

(3) Any nonresident or part-year resident individual having for the current taxable year a gross income (as defined in section 61(a) of the Internal Revenue Code) from Idaho sources in excess of the amounts established in subsection (a)(1)(A) of this section;

(4) Every corporation subject to taxation by this act; any corporation reporting as a subchapter S corporation pursuant to Internal Revenue Code sections 1376~~1~~ through 1378~~9~~ to the federal government and having business situs in this state or with one (1) or more of its shareholders residing in this state must report to the state of Idaho as a subchapter S corporation for and during the same period or periods in which its election to report as such a corporation is effective for federal tax purposes and must identify itself as a subchapter S corporation on its income tax return filed with this state;

(5) Every estate, the residence of which estate is in Idaho, having a gross income (as defined in section 61(a) of the Internal Revenue Code) of six hundred dollars ($600) or more for the current taxable year;

(6) Every estate, the residence of which is in a state other than Idaho, having a gross income (as defined in section 61(a) of the Internal Revenue Code) from Idaho sources in excess of six hundred dollars ($600);

(7) Every trust, the residence of which trust is in Idaho, having gross income (as defined in section 61(a) of the Internal Revenue Code) of one hundred dollars ($100) or more for the current taxable year;

(8) Every trust, the residence of which is in a state other than Idaho, having a gross income (as defined in section 61(a) of the Internal Revenue Code) from Idaho sources in excess of one hundred dollars ($100);

(9) Every partnership having a resident partner and every partnership having a business situs in the state of Idaho. Such return shall be a supplemental information return and shall include the names and addresses of the individuals who would be entitled to share in the net income of the partnership if distributed and the amount of the distributive share of each individual. Such return shall be signed by one (1) of the partners.

(b) Returns of fiduciaries and receivers:

(1) Fiduciaries and receivers shall file returns with the state tax commission in accordance with the provisions of section

6012(b) of the Internal Revenue Code.

(c) Certain income earned abroad or from sale of residence: For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 of the Internal Revenue Code (relating to one-time exclusion~~,~~ of gain from sale of principal residence by an individual who has attained age fifty-five (55)) and without regard to the exclusion provided for in section 911 of the Internal Revenue Code (relating to income earned abroad).

SECTION 4. That Section 63-3030A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3030A. MANDATE TO COMPEL RETURN. (a) If a taxpayer fails to file a return within sixty (60) days of the time prescribed by this chapter, a district judge of the county within which the taxpayer resides or has its principal place of business or of Ada county in the case of a nonresident taxpayer or one having its principal place of business outside the state, upon petition of the state tax commission, shall issue a writ of mandate requiring the person to file a return. The petition shall be returnable not later than ~~ten~~ twenty-eight (~~10~~28) days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. Proceedings upon such suits shall be in accordance with chapter 3, title 7, Idaho Code.

(b) Nothing in this section shall limit the remedies otherwise available to the state tax commission under this chapter or any other laws of this state.

SECTION 5. That Section 63-3033, Idaho Code, be, and the same is hereby amended to read as follows:

63-3033. EXTENSION OF TIME. (a) The state tax commission may grant a reasonable extension of time for filing any return, declaration, statement or other document, or payment required by this act; provided, however, that (1) no such extension shall be for a period in excess of six (6) months; (2) a payment must accompany the initial request for extension of time to file an income tax return which must be at least eighty per cent (80%) of the total tax reported on the income tax return when it is filed, or must be the same as the total tax reported on the income tax return for the prior year if a return was filed for the prior year; (3) taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year. Any taxpayer entitled to an automatic extension shall attach a statement to his return claiming his right to such extension. Taxpayers who are military personnel or residents of foreign nations and entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections

911 and 7508 of the Internal Revenue Code as they appeared on the first day of January, 1969, shall be entitled to extensions of time for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(b) If the amount of payment made under subsection (a) (2) of this section is less than eighty per cent (80%) of the total tax ~~reported--on-the-income-tax-return-when-it-is-filed~~ due under the provisions of this chapter and is less than the amount of the total tax reported on the income tax return for the prior year, a penalty may be applied to the total of the balance due in the amount prescribed by section 63-3046(a), Idaho Code, unless reasonable cause can be established.

(c) In all cases, where the state tax commission has granted an extension of time in which to file any return, interest shall be paid on any tax due from due date to date of payment at the rate provided in section 63-3045, Idaho Code.

SECTION 6. That Section 63-3074, Idaho Code, be, and the same is hereby amended to read as follows:

63-3074. ACTIONS AGAINST STATE OF IDAHO. The state tax commission may be made a party defendant in an civil action ~~at-law-or-a-suit-in equity~~ by any person aggrieved under this chapter or any other chapter in which this section is expressly incorporated by reference by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final money judgment secured against the state tax commission, and said judgment shall be paid or satisfied out of the state refund fund created by ~~this-act~~ section 63-3067, Idaho Code. No seizure or sale shall be considered unlawful if it occurs in the collection of any deficienc~~ies~~y which was included in the person's tax return or asserted in a notice of deficiency determination pursuant to section 63-3045 or 63-3629, Idaho Code, or in a jeopardy assessment pursuant to the provisions of section~~s~~ 63-3~~052~~629 or 63-3065, Idaho Code.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993.

Approved Feburary 19, 1993.

CHAPTER 4
(H.B. No. 77)

AN ACT

APPROPRIATING THREE HUNDRED THOUSAND DOLLARS OR SUCH LESSER AMOUNT THEREOF AS MAY BECOME AVAILABLE FROM THE FUNDS MADE AVAILABLE TO THE DEPARTMENT OF EMPLOYMENT OF THE STATE OF IDAHO PURSUANT TO

SECTION 903 OF THE SOCIAL SECURITY ACT, AS AMENDED, FOR THE PURCHASE OF REAL AND PERSONAL PROPERTY, FOR THE CONSTRUCTION OF OFFICE BUILDINGS FOR USE BY THE DEPARTMENT OF EMPLOYMENT, AND FOR REPAIRING, REMODELING AND MAINTAINING OFFICE BUILDINGS FOR USE OF THE DEPARTMENT OF EMPLOYMENT; AND PROVIDING THAT NO PART OF THE MONEY APPROPRIATED SHALL BE OBLIGATED AFTER THE EXPIRATION OF THE TWO-YEAR PERIOD BEGINNING WITH THE FIRST DAY OF JULY, 1993.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated out of the funds made available to the Department of Employment of the State of Idaho, pursuant to Section 903 of the Social Security Act, as amended, the sum of $300,000 or such lesser amount thereof as may become available as this state's share of funds allocated under the provisions of said Section 903 of the Social Security Act, as amended, to be used for the purpose of the purchase of real and personal property, the construction of office buildings for use by the Department of Employment, and for repairing, remodeling and maintaining office buildings used by the Department of Employment of the State of Idaho, as authorized by and subject to the limitations of Section 72-1346(e), Idaho Code, and Section 72-1348(d), Idaho Code.

SECTION 2. No part of the money hereby appropriated shall be obligated after the expiration of the two-year period beginning with the first day of July, 1993.

Approved February 19, 1993.

CHAPTER 5
(H.B. No. 41)

AN ACT

RELATING TO INCOME TAX WITHHOLDING BY EMPLOYERS; AMENDING SECTION 63-3035, IDAHO CODE, TO REQUIRE EMPLOYERS REQUIRED TO WITHHOLD INCOME TAX TO REGISTER WITH THE STATE TAX COMMISSION; AMENDING SECTION 63-3036, IDAHO CODE, TO EXTEND THE DATE FOR FILING THE EMPLOYER'S ANNUAL STATEMENT BY FARMER-EMPLOYERS AND EMPLOYERS EXEMPT FROM FEDERAL WITHHOLDING TO THE LAST DAY IN FEBRUARY; AND AMENDING SECTION 63-3046, IDAHO CODE, TO CHANGE THE PENALTY FOR FAILING TO FILE THE ANNUAL STATEMENT OF PAYMENT TO ANOTHER PERSON AND THE DUPLICATE STATEMENT OF TAX WITHHELD ON WAGES, ON THE DATE PRESCRIBED TO TWO DOLLARS FOR EACH MONTH OR PART OF A MONTH EACH STATEMENT IS NOT SO FILED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3035, Idaho Code, be, and the same is hereby amended to read as follows:

63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS -- WITHHOLD-

ING, COLLECTION AND PAYMENT OF TAX. (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this act. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

(1) shall be liable to the state of Idaho for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section;

(2) must make return of and pay to the state tax commission monthly on or before the 20th day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this act, he is required to deduct and withhold; ~~and~~

(3) shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) must, notwithstanding the provisions of paragraphs (1) and (2), if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds thirty-six thousand dollars ($36,000) per annum or an average of three thousand dollars ($3,000) per month per annum, make return of and pay to the state tax commission monthly on the following basis:

(A) For the withholding period May 1, 1983, through May 15, 1983, inclusive, payment and return must be made on or before May 20, 1983.

(B) Withholding periods for employers defined in this subsection 63-3035(a)(3), Idaho Code, shall, on and after May 16, 1983, begin on the 16th day of the month and end on the 15th day of the following month, and return and payment shall be made not later than five (5) days after the end of the withholding period.

(b) (1) Every employer shall, at the time of each payment made by him to the state tax commission, deliver to the state tax commission a return upon such form as shall be prescribed by said state tax commission showing the total amount of wages, salary, bonus or other emoluments paid to his employees, the amount deducted there-

from in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance with the provisions of this section, and such pertinent and necessary information as the state tax commission may require.

(2) Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and on or before the last day of February every employer shall file a copy thereof with the state tax commission. Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media or in other machine readable form may be required by regulations of the state tax commission to file corresponding state returns on similar magnetic media or other machine readable form.

(c) All moneys deducted and withheld by every employer shall immediately upon such deduction be state money and every employer who deducts and retains any amount of money under the provisions of this act shall hold the same in trust for the state of Idaho and for the payment thereof to the state tax commission in the manner and at the times in this act provided. Any employer who does not possess real property situated within the state of Idaho, which, in the opinion of the state tax commission, is of sufficient value to cover his probable tax liability, may be required to post a surety bond in such sum as the state tax commission shall deem adequate to protect the state.

(d) The provisions of this act relating to additions to tax in case of delinquency, and penalties, shall apply to employers subject to the provisions of this section and for these purposes any amount deducted, or required to be deducted and remitted to the state tax commission under this section, shall be considered to be the tax of the employer and with respect to such amount he shall be considered the taxpayer.

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his taxable income as computed under the provisions of this act, as the same has been or may hereafter be amended, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. No credit or refund shall be made to an employee who fails to file his return, as required under this act, within three (3) years from the due date of the return in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar ($1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed.

(f) This section shall in no way relieve any taxpayer from his obligation of filing a return at the time required under this act, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 63-3034, Idaho Code.

(g) An employee receiving wages shall on any day be entitled to the same number of withholding exemptions to which he is entitled under the Internal Revenue Code for federal income tax withholding purposes.

(h) An employer shall use the exemption certificate filed by the employee with the employer under the withholding exemption provisions of the Internal Revenue Code in determining the amount of tax to be withheld from the employee's wages or salary under this act. The tax commission may redetermine the number of withholding exemptions to which an employee is entitled under subsection (g) of this section, and the state tax commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed for Internal Revenue Code purposes does not properly reflect the number of withholding exemptions to which the employee is entitled under this act. In no event shall any employee give an exemption certificate which claims a higher number of withholding exemptions than the number to which the employee is entitled by subsection (g) of this section.

SECTION 2. That Section 63-3036, Idaho Code, be, and the same is hereby amended to read as follows:

63-3036. STATE WITHHOLDING TAX ON PERCENTAGE BASIS FOR FARMERS AND OTHERS EXEMPT FROM FEDERAL WITHHOLDING. Every farmer who is an employer and employers exempt from withholding by the Internal Revenue Code shall at the time of the payment of wages, salaries, bonus or other emoluments to an employee, deduct and retain therefrom an amount equal to one per cent (1%) of such wage, salary, bonus or emolument or the value of such emolument, and the amount so withheld and deducted shall be held by said farmer-employer and other employers in trust for the state of Idaho and for the payment thereof to the state tax commission. The farmer-employer and other employers shall deliver to the state tax commission a return upon such form as shall be prescribed by said state tax commission showing the amounts of wages, salary, bonus or other emoluments paid to his employee, the amount deducted therefrom in accordance with this section, and such other pertinent and necessary information as the state tax commission may require on or before January 31 of the year following the year in which such deduction was made. The farmer-employer or other employers making such a deduction as provided for in this section shall furnish to the employee annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of the tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and at the same time every employer shall file a copy thereof with the state tax commission. The provisions of subsections (d), (e) and (f) of section 63-3035, Idaho Code, shall be applicable to the tax withheld by the farmer-employer or other employers under this section. The tax so withheld by the farmer-employer or

other employers shall be paid annually to the state tax commission on or before ~~January--31~~ the last day of February of the year following the year in which such deduction was made. Provided, that no tax need be withheld from an employee whose wages, salaries, bonuses and other emoluments total less than one thousand dollars ($1,000) for the tax year.

SECTION 3. That Section 63-3046, Idaho Code, be, and the same is hereby amended to read as follows:

63-3046. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY. (a) If any part of any deficiency is due to negligence or disregard of rules and regulations but without intent to defraud, five per cent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency except that no interest shall accrue upon the five per cent (5%) amount hereby imposed.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty per cent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

(c) In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

(d) (1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten per cent (10%) of the amount of any underpayment attributable to such understatement.

(2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

(i) Ten per cent (10%) of the tax required to be shown on the return for the taxable year, or

(ii) Five thousand dollars ($5,000).

(3) In the case of a corporation, paragraph (d)(2)(ii) of this section shall be applied by substituting ten thousand dollars ($10,000) for five thousand dollars ($5,000).

(4) For purposes of paragraph (d)(2) of this section, the term "understatement" means the excess of:

(i) The amount of tax required to be shown on the return for the taxable year, over

(ii) The amount of the tax imposed which is shown on the return.

(5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:

(i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii) Any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed

in the return or in a statement attached to the return.

(6) In the case of any item attributable to a tax shelter as defined in section 6661 of the Internal Revenue Code:

(i) Paragraph (5)(ii) shall not apply, and

(ii) Paragraph (5)(i) shall not apply unless (in addition to meeting the requirements of such paragraph) the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment.

(7) The state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(e) Any person who fails to file a statement of payment to another person required by this act, including the duplicate statement of tax withheld on wages, on the date prescribed therefor (including any extension of time for filing) shall, unless he shows that such failure is due to reasonable cause and not to wilful neglect, pay, upon notice and demand by the state tax commission and in the same manner as the payment of the tax, a penalty of two dollars ($2.00) for each month or part of a month each statement is not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars ($2,000).

(f) If the penalty to be added to the tax by subsections (a), (b), (c), (d) or (e) hereof is less than ten dollars ($10.00), the penalty to be added to the tax shall be a minimum of ten dollars ($10.00).

(g) A processing charge to be determined and established annually by the state tax commission shall be collected from any person who draws or delivers a check, draft or order for the payment of money in complete or partial satisfaction of the tax imposed by this chapter if that person does not have sufficient funds in or credit with the bank or depository upon which the check, draft or order is drawn. Money collected under this subsection shall be paid to the state tax commission to defer costs of handling such checks, drafts or orders.

Approved March 5, 1993.

CHAPTER 6
(H.B. No. 42)

AN ACT

RELATING TO ESTATE TAXES; AMENDING SECTION 14-402, IDAHO CODE, TO PROVIDE A DEFINITION; AMENDING CHAPTER 4, TITLE 14, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 14-404A, IDAHO CODE, TO PROVIDE FOR THE VALUATION AND TAXATION OF SPECIAL USE PROPERTY UNDER SECTION 2032A OF THE FEDERAL INTERNAL REVENUE CODE AND TAXATION OF SUCH PROPERTY IF IT CEASES TO QUALIFY AS SPECIAL USE PROPERTY; AMENDING SECTION 14-409, IDAHO CODE, TO PROVIDE THAT TAXES DUE IF THE PROPERTY CEASES TO QUALIFY AS SPECIAL USE PROPERTY WITHIN TEN YEARS OF ITS ORIGINAL TAXABLE TRANSFER ARE A LIEN ON THE PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 14-402, Idaho Code, be, and the same is hereby amended to read as follows:

14-402. DEFINITIONS. As used in this chapter:

(1) "Commission" means the Idaho state tax commission.

(2) "Decedent" means a deceased individual.

(3) "Federal credit" means the maximum amount of the credit for state death taxes allowed by section 2011 of the United States internal revenue code of 1986, as amended or renumbered, and the maximum amount of the credit for the generation skipping tax allowed by section 2604 of the United States internal revenue code of 1986, as amended or renumbered, in respect to a decedent's taxable estate.

(4) "Federal estate tax return" means any form or other document which establishes, changes or amends a federal estate tax amount.

(5) "Gross estate" means "gross estate" as defined and used in section 2031 of the United States internal revenue code of 1986, as amended or renumbered.

(6) "Nonresident" means a decedent who was domiciled outside Idaho at the time of death.

(7) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof.

(8) "Personal representative" means the executor or administrator of the decedent or, if no executor or administrator is appointed, qualified and acting, any person who has possession of any property.

(9) "Property" means property included in the gross estate.

(10) "Release" means a release of no tax due or a receipt for payment of the tax due under this chapter.

(11) "Resident" means a decedent who was domiciled in Idaho at the time of death.

(12) "Section 2011" means section 2011 of the United States internal revenue code of 1986, as amended or renumbered.

(13) "Section 2032A" means section 2032A of the United States internal revenue code of 1986, as amended or renumbered.

(14) "Section 6501" means section 6501 of the United States internal revenue code of 1986, as amended or renumbered.

(14~~5~~) "Taxable estate" means "taxable estate" as defined in section 2051 of the United States internal revenue code of 1986, as amended or renumbered.

(15~~6~~) "Transfer" means "transfer" as defined and used in section 2001 of the United States internal revenue code of 1986, as amended or renumbered.

SECTION 2. That Chapter 4, Title 14, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 14-404A, Idaho Code, and to read as follows:

14-404A. SPECIAL USE VALUATION -- RECAPTURE. If property valued

under the special use valuation provisions of section 2032A ceases to qualify for special use valuation within the recapture period provided in section 2032A, an additional tax, equal to the amount of any increase in the state death tax credit allowed under section 2011 attributable to the change in the value of the estate resulting from the recapture required by section 2032A shall be due. The person required to provide notice to the internal revenue service that property subject to special use valuation has ceased to qualify for such valuation shall provide a copy of such notice to the commission. The limit upon assessment of the additional tax imposed by the provisions of this section, including any penalty and interest, shall be one (1) year from the date on which the commission receives such notice.

SECTION 3. That Section 14-409, Idaho Code, be, and the same is hereby amended to read as follows:

14-409. TAX AS LIEN -- INSTRUMENTS ISSUED UPON PAYMENT -- CERTIFICATE OF TRANSFER -- LIENS ON SPECIAL USE PROPERTY. (1) The tax provided for in this chapter, together with applicable interest and penalties, shall be and remain a lien on the decedent's estate from the time of the death of the decedent until paid.

(2) Upon payment of the tax, together with applicable interest and penalties, the commission shall issue to the personal representative a receipt reflecting payment, a certificate of transfer and any other appropriate instruments reflecting payment.

(3) In addition to the lien imposed in subsection (1) of this section, a lien is hereby imposed upon the property which is valued according to section 2032A. This additional lien shall be for the amount of tax which would have been due under the provisions of this chapter had the property not been valued according to section 2032A. This lien shall remain upon the property until the recapture period required in section 2032A has expired or until any additional tax imposed in section 14-404A, Idaho Code, has been paid.

Approved March 5, 1993.

CHAPTER 7
(H.B. No. 44)

AN ACT

RELATING TO SALES TAX EXEMPTIONS FOR CERTAIN RESIDENT CONTRACTORS AND RESIDENT NONPROFIT EDUCATIONAL INSTITUTIONS; AMENDING SECTION 63-3622B, IDAHO CODE, RELATING TO SALES TO RESIDENT CONTRACTORS FOR CERTAIN OUT-OF-STATE CONTRACTS, TO REMOVE THE LIMITATION TO RESIDENT CONTRACTORS; AMENDING SECTION 63-3622O, IDAHO CODE, AS IT APPLIES TO RESIDENT NONPROFIT EDUCATIONAL INSTITUTIONS, TO REMOVE THE LIMITATION TO RESIDENT EDUCATIONAL INSTITUTIONS AND TO REINSERT INTO THE IDAHO CODE THE EXISTING EXEMPTION FOR THE IDAHO SPECIAL OLYMPICS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3622B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622B. OUT-OF-STATE CONTRACTS. There is exempted from the taxes imposed by this chapter the sale of tangible personal property to ~~resident~~ contractors for subsequent incorporation into real property outside this state in the performance of a contract to improve the out-of-state realty unless this provision would result in subjection of said contractor to a use or similar excise tax in another state.

SECTION 2. That Section 63-3622O, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622O. NONPROFIT ORGANIZATIONS. There are exempted from the taxes imposed by this chapter sales to, donations to, and purchases by food banks or soup kitchens, sales of clothes to, donations of clothes to and purchases of clothes by nonsale clothiers, and sales to or purchases by hospitals, health-related entities, educational institutions, forest-protective associations and canal companies which are nonprofit organizations. As used in this subsection, these words shall have the following meanings:

(a) "Educational institution" shall mean ~~resident~~ nonprofit colleges, universities, primary and secondary schools ~~and--nonresident nonprofit--colleges,-universities,-primary-and-secondary-schools-which have-a-branch-campus,-or-facility-located-in-this-state~~, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.

(b) "Hospital" shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.

(c) "Health-related entities" shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, Idaho Association of Retarded Citizens, Idaho Heart Association, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, ~~and~~ Easter Seals, <u>and Idaho Special Olympics,</u> together with said entities' local or regional chapters or divisions.

(d) "Canal companies" shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(e) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only

those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(f) "Food banks or soup kitchens" shall mean the Idaho foodbank warehouse, inc. and any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of food or food products to others without charge.

(g) "Nonsale clothier" shall mean any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(h) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

Approved March 5, 1993.

CHAPTER 8
(H.B. No. 70)

AN ACT

RELATING TO PAYMENT OF TAXES AND FEES BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTION 67-2026, IDAHO CODE, TO REQUIRE ALL TAXES, FEES AND ADDITIONAL AMOUNTS DUE TO THE STATE OF IDAHO BE PAID BY ELECTRONIC FUNDS TRANSFER WHEN THE TOTAL OF THE AMOUNT DUE EXCEEDS ONE HUNDRED THOUSAND DOLLARS; AMENDING CHAPTER 20, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2026A, IDAHO CODE, PROVIDING FOR INTEREST AND PENALTY CHARGES FOR FAILURE TO USE ELECTRONIC FUNDS TRANSFER WHEN REQUIRED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2026, Idaho Code, be, and the same is hereby amended to read as follows:

67-2026. TAXES TO BE PAID BY ELECTRONIC FUNDS TRANSFER. (1) ~~After July 1, 1980, a~~All taxes ~~due~~ and additional amounts of interest, penalty or fees payable together with taxes which are payable to the state must be paid by electronic funds transfer whenever the amount ~~due~~ paid or payable is one hundred thousand dollars ($100,000) or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

(2) The board of examiners, in coordination with the state treasurer and those affected departments, shall adopt rules necessary to implement the provisions of this section including, but not limited to, rules:

(a) Coordinating the filing of tax returns with the payment of taxes by electronic funds transfer; and

(b) Specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment.

SECTION 2. That Chapter 20, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-2026A, Idaho Code, and to read as follows:

67-2026A. FAILURE TO USE ELECTRONIC FUNDS TRANSFER. (1) Any payor required under the provisions of section 67-2026, Idaho Code, to make a payment by electronic transfer who makes the payment by check or other nonelectronic means shall be liable for an additional amount of interest. The interest shall be calculated at the annual rate of twelve per cent (12%) simple interest for the period of time between the day the payment is due and the day the funds become available to the state treasurer for investment. Unless the payor establishes a contrary time, the time between receipt of a payment by means other than electronic funds transfer and the time the funds become available to the state treasurer for investment is presumed to be five (5) days.

(2) If the agency administering the tax determines that a payor's failure to use electronic funds transfer when required is due to the payor's negligence or is the result of the payor's knowing disregard of the requirement, the agency may assert a penalty, in addition to the interest charged under subsection (1) of this section, of five hundred dollars ($500). If the payor establishes that the failure is not due to his negligence or the result of his knowing disregard of the requirement, the agency shall abate the penalty, but it shall not abate the interest due under subsection (1) of this section.

(3) Amounts due under this section shall be asserted by the agency administering the tax in the same manner provided by law for a failure to pay taxes or fees due.

Approved March 5, 1993.

CHAPTER 9
(H.B. No. 76)

AN ACT

RELATING TO TAX ON CONTROLLED SUBSTANCES; AMENDING SECTION 63-4202, IDAHO CODE, TO MORE CLEARLY DEFINE THE TERM "CONTROLLED SUBSTANCE" TO INCLUDE THE ENTIRE AMOUNT OF SUBSTANCE POSSESSED WHEN POSSESSED IN AMOUNTS OVER CERTAIN THRESHOLDS; AMENDING SECTION 63-4203, IDAHO CODE, IMPOSING THE TAX ON CONTROLLED SUBSTANCES TO MORE CLEARLY STATE THAT THE TAX APPLIES TO ANY AND ALL QUANTITIES OF CONTROLLED SUBSTANCES POSSESSED BY ANY PERSON WHEN THE THRESHOLD QUANTITIES AS DETERMINED IN SECTION 63-4202, IDAHO CODE, ARE SATISFIED; AMENDING SECTION 63-4208, IDAHO CODE, RELATING TO THE IMPOSITION OF JEOPARDY ASSESSMENTS BY THE STATE TAX COMMISSION TO ENFORCE THE TAX ON CONTROLLED SUBSTANCES, TO STATE A LEGISLATIVE FINDING THAT THE UNLAWFUL POSSESSION OF ANY CONTROLLED SUBSTANCE NOT BEARING VALID STAMPS OR OTHER OFFICIAL INDICIA REQUIRED IN THIS CHAPTER IS AN ACT PREJUDICING THE COLLECTION OF THE TAX IMPOSED IN THIS CHAPTER AND TO STATE THAT NO SPECIFIC FINDING OF JEOPARDY BY THE COMMISSION IS REQUIRED TO AUTHORIZE THE USE OF THE

JEOPARDY ASSESSMENT PROCEDURES PROVIDED IN THIS SECTION, AND PROVIDING A PROCEDURE TO ASSERT ADDITIONAL AMOUNT OF TAX LATER FOUND TO BE DUE; AMENDING CHAPTER 42, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-4211, IDAHO CODE, PROVIDING PROCEDURES FOR CLAIMS AGAINST THE COMMISSION RELATING TO LEVY AND SEIZURE UPON PROPERTY CLAIMED TO BE EXEMPT OR CLAIMED TO BE PROPERTY OF THIRD PERSONS NOT LIABLE FOR THE TAX AND FOR JUDICIAL REVIEW OF ANY DENIAL OF SUCH CLAIMS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-4202, Idaho Code, be, and the same is hereby amended to read as follows:

63-4202. DEFINITIONS. As used in this chapter:

(1) "Commission" means the state tax commission.

(2) "Controlled substance" means the entire amount of any drug or substance, whether real or counterfeit, as defined in section 37-2701, Idaho Code, when possessed in the following quantities and in violation of Idaho law:

(a) More than forty-two and one-half (42 1/2) grams of marijuana; or

(b) One (1) or more growing marijuana plants; or

(c) Seven (7) or more grams of any other controlled substance sold by weight; or

(d) Ten (10) or more dosage units of any controlled substance which is not sold by weight.

(3) "Possess" or "possession" means, in addition to its ordinary meaning and tenses, to include hold, sell, manufacture, acquire, produce, purchase, ship, transport, transfer or import into Idaho.

SECTION 2. That Section 63-4203, Idaho Code, be, and the same is hereby amended to read as follows:

63-4203. ILLEGAL DRUG TAX IMPOSED ON POSSESSION OF CONTROLLED SUBSTANCES. (1) Every person who in violation of Idaho law possesses a controlled substance shall be liable for payment of an excise tax on all of the controlled substance possessed including the amount below any threshold provided in section 63-4202, Idaho Code.

(2) The tax hereby imposed is calculated at the following rates:

(a) On each gram of marijuana, or each portion of a gram, three dollars and fifty cents ($3.50);

(b) On each gram of other controlled substance sold by weight, or each portion of a gram, two hundred dollars ($200);

(c) On each fifty (50) dosage units of a controlled substance that is not sold by weight, or portion thereof, two thousand dollars ($2,000); and

(d) On a growing marijuana plant, seven hundred seventy-five dollars ($775) per plant. A credit of seven hundred seventy-five dollars ($775) shall be given for the payment of each illegal drug tax on a growing marijuana plant against payment of illegal drug taxes for possession of marijuana harvested from the growing marijuana plant, provided, no credit shall be given unless evidence of

payment of illegal drug taxes on a growing marijuana plant is permanently affixed to the marijuana harvested from it.

(3) For the purpose of calculating the illegal drug tax under this chapter, other than for growing marijuana plants, a quantity of controlled substance is measured by the weight of the substance, whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in a person's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(4) For the purposes of article VII of the Idaho constitution, the illegal drug taxes imposed in this chapter shall not be held or construed to be a tax on property.

SECTION 3. That Section 63-4208, Idaho Code, be, and the same is hereby amended to read as follows:

63-4208. COMMISSION TO ADMINISTER TAX -- JEOPARDY ASSESSMENT -- INAPPLICABILITY OF HOMESTEAD EXEMPTION -- BURDEN OF PROOF -- OTHER SECTIONS APPLICABLE. (1) The commission shall administer the provisions of this chapter and may adopt rules necessary to enforce the provisions of this chapter.

(2) (a) Upon the discovery of a controlled substance not bearing valid stamps or other official indicia required in this chapter, the commission shall make a jeopardy determination assessing the taxes and penalties against the person subject to the illegal drug taxes. The determination shall be made upon personal knowledge or information available to the commission. Written notice of the amount of the tax and penalty and demand for immediate payment shall be mailed, by certified or registered mail, to the last known address of, or served in person upon, the person subject to the illegal drug taxes and penalties. Upon giving notice and demand, collection procedures as provided in sections 63-3050 through 63-3064 and 63-3065A, Idaho Code, may be instituted immediately.

(b) A person aggrieved by a jeopardy assessment may, within thirty (30) days after mailing or service of the notice of the jeopardy assessment, petition the commission for a redetermination of the assessment. Collection procedures shall not be stayed pending the redetermination unless a bond in double the amount of the assessment is filed with the commission. If a petition for redetermination is not filed within the thirty (30) day period, the jeopardy assessment becomes final.

(c) If a petition for redetermination is filed within the thirty (30) day period, the commission shall redetermine the petition and if requested shall give the petitioner a reasonable opportunity to be heard. The redetermination shall proceed in accordance with the procedures established for redetermining notices of deficiency determination under section 63-3045, Idaho Code. The commission shall mail, by certified mail, or personally serve the petitioner the redetermination decision. A decision redetermining a jeopardy assessment becomes final thirty (30) days after mailing or service of the decision. A person aggrieved by a redetermination by the state tax commission may seek review of that redetermination as

provided in section 63-3049, Idaho Code, as limited by this provision.

(d) No property seized pursuant to a jeopardy assessment shall be sold until an assessment becomes final, provided, such property can be sold:

(i) If its owner consents;

(ii) If the expenses of maintenance of the property will gravely reduce the net proceeds of its sale; or

(iii) If the property is perishable.

(3) A homestead exemption provided in chapter 10, title 55, Idaho Code, shall not exempt real property from a lien for illegal drug taxes imposed in this chapter.

(4) Any taxes and penalties assessed by the commission are presumed to be valid and correct. The burden is on the taxpayer to show their incorrectness or invalidity. The unlawful possession of any controlled substance not bearing valid stamps or other official indicia required in this chapter is an act prejudicing the collection of the tax imposed in this chapter. No specific finding of jeopardy by the commission is required to authorize the use of the jeopardy assessment procedure provided in this section.

(5) At any time within one (1) year after the imposition of a jeopardy assessment pursuant to subsection (2)(a) of this section, the commission, if it determines that the jeopardy assessment was not issued for the full amount of tax due under this chapter, may issue to the person liable for the tax under this chapter a notice of deficiency determination in the manner provided in section 63-3045, Idaho Code, for such additional amount. The provisions of subsection (2)(c) of this section shall apply to a notice issued under the provisions of this subsection.

(~~5~~6) In addition to the enforcement and penalty provisions of this chapter, sections 63-3038, 63-3039, 63-3042, 63-3043, 63-3047 and 63-3048, Idaho Code, shall apply and be available to the state tax commission for the enforcement of the provisions of this chapter for the assessment and collection of any amounts due and said sections shall be considered to be a part of this chapter.

SECTION 4. That Chapter 42, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-4211, Idaho Code, and to read as follows:

63-4211. THIRD PARTY AND EXEMPTION CLAIMS -- ACTIONS AGAINST STATE OF IDAHO. (1) Any person claiming that the property levied upon and seized by the commission for the collection of any tax, penalty, interest or other amounts due under this chapter is either:

(a) the property of a person other than a person against whom taxes sought to be collected under this chapter have been assessed, or

(b) the property is property exempt from levy to enforce a claim for state taxes under chapter 6, title 11, Idaho Code,

may, within fourteen (14) days of the date of the levy, file a written claim with the commission setting forth the grounds for the claim. The commission shall grant or deny the claim in a written notice to the

claimant within fourteen (14) days of the commission's receipt of the claim.

(2) A denial of a claim under subsection (1) of this section by the commission may be reviewed in the district court for Ada county or the county the property was seized or is then located by a complaint filed by the claimant against the commission within thirty (30) days after the mailing of the notice denying the claim, in whole or in part. Upon the serving of summons upon the commission the case shall proceed as other civil cases and shall be heard by the court without a jury. Only the state of Idaho shall be responsible for any final money judgment secured against the commission, and said judgment shall be paid or satisfied out of the state refund fund created in section 63-3067, Idaho Code.

Approved March 5, 1993.

CHAPTER 10
(H.B. No. 46)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1342, IDAHO CODE, AS AMENDED BY SECTION 109, CHAPTER 213, LAWS OF 1990, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF EMPLOYMENT MAY ADOPT RULES TO ESTABLISH FEES AND STANDARDS FOR THE RELEASE OF INFORMATION TO PUBLIC AGENCIES; AMENDING SECTION 72-1367A, IDAHO CODE, TO SUSPEND THE ELIGIBILITY REQUIREMENTS PERTAINING TO WORK SEARCH, SUITABLE WORK, AND REQUALIFICATION APPLICABLE TO EXTENDED UNEMPLOYMENT INSURANCE BENEFITS, TO PROVIDE THAT THE PROVISIONS APPLICABLE TO REGULAR UNEMPLOYMENT INSURANCE BENEFITS SHALL APPLY IN LIEU OF THE SUSPENDED PROVISIONS, AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1342, Idaho Code, as amended by Section 109, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

72-1342. DISCLOSURE OF INFORMATION. Except as hereinafter otherwise provided, information obtained from any employer or individual pursuant to the administration of this act, and determinations of the benefit rights of any individual shall be subject to disclosure as provided in chapter 3, title 9, Idaho Code. Provided, however, that if all interested parties waive in writing the right to hold said information confidential, said information may be disclosed. Any claimant (or his legal representative) shall be supplied with information from the records available to the director, to the extent necessary for the proper presentation of the claim in any proceedings under this act with respect thereto. Any cost reimbursement employer shall be supplied with information from the records available to the director to the extent necessary to identify or determine actual or potential

costs for which it may be required to reimburse the department. Subject to such restrictions and fees as ~~provided in chapter 3, title 9, Idaho Code~~ the director may by rule prescribe, such information may be made available to public employees in the performance of their public duties. The director may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this act, and may in connection with such request transmit any such report or return to the comptroller of the currency of the United States as provided in section 1606(c) of the Federal Internal Revenue Code.

SECTION 2. That Section 72-1367A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367A. EXTENDED UNEMPLOYMENT COMPENSATION BENEFITS. The state of Idaho hereby adopts an extended unemployment compensation benefits program to be governed by and interpreted by the provisions of this section.

(a) Definitions. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

1. The third week after the first week for which there is a state "off" indicator; or

2. The thirteenth consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For weeks beginning after September 26, 1982, there is a "state 'on' indicator" for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted, under this act:

(A) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; and

(B) Equaled or exceeded five percent (5%); and

(C) Provided that with respect to benefits for weeks of unemployment beginning after September 26, 1982, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if it did not contain paragraph (A), and the figure "5" contained in paragraph (B) were "6" except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and

shall not be determined to be a week for which there is a state "off" indicator.

(3) There is a "state 'off' indicator" for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted, under this act:

(A) Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or

(B) Was less than five percent (5%).

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this section, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by

(B) The average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(5) "Regular benefits" mean benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(6) "Extended benefits" mean benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular benefits that were available to him under this act or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular

benefits; or

(B) His benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(C) Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, the automotive products trade act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee. Provided, however, that this provision shall not be applicable to individuals seeking benefits under the unemployment compensation laws of the Virgin Islands on the day after the day on which the secretary of labor approves an unemployment compensation law submitted to him by the Virgin Islands for approval under the provisions of section 3304(a) of the Internal Revenue Code of 1954.

(9) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(10) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable state law.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the director, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the director finds that with respect to such week:

(1) He is an "exhaustee" as defined in subsection (a)(8) of this section;

(2) He has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(3) He has earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages.

(4) (A) Notwithstanding the provisions of this section, payment of extended compensation under this act shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (a)(10) of this section, or fails to apply for any suitable work to which he was referred; or

2. During which he fails to actively engage in seeking work.

(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsection (c)(4)(A) 1 or (c)(4)(A) 2 ~~hereof~~ of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which:

1. Begins with the week following the week in which such failure occurs; and

2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount.

(C) Extended compensation shall not be denied under subsection (c)(4)(A) 1 of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:

1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:

a. The individual's average weekly benefit amount, as determined for purposes of subsection (b)(1)(C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus

b. The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501 (c)(17)(D) of the Internal Revenue Code of 1954, payable to such individual for such week.

2. If the position was not offered to such individual in writing or was not listed with the state employment service;

3. If such failure would not result in a denial of compensation under the provisions of the applicable state law to the extent that such provisions are not inconsistent with the provisions of subsections (a)(10) and (c)(4)(D) of this section; or

4. If the position pays wages less than the higher of:

a. The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or

b. Any applicable state or local minimum wage.

(D) For purposes of this paragraph, an individual shall be

treated as actively engaged in seeking work during any week if:

1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

2. The individual provides tangible evidence to the state agency that he has engaged in such an effort during such week.

(E) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1, 2, 3, and 4 of subsection (c)(4)(C) of this section would not apply.

(d) (1) Except as provided in paragraph (2) below, payment of extended compensation shall not be made to any individual for any week if:

(A) Extended compensation would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(B) An extended benefit period is not in effect for such week in such state.

(2) Paragraph (1) of this subsection shall not apply with respect to the first two (2) weeks for which extended compensation is payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

(3) Section 3304 (a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection.

(e) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(f) Total extended benefit amount. The total extended benefit amount payable to an eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) Thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year;

(3) Provided that the amount so determined shall be reduced by the total amount of extended benefits paid, or being paid, to the individual under the provisions of this section as such law existed prior to the effective date of this act, for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(4) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such indi-

vidual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(g) (1) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make an appropriate public announcement;

(2) Computations required by the provisions of subsection (a)(4) of this section shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(h) Irrespective of any of the other provisions of this act, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

(i) Whenever a program of unemployment compensation becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (a)(1) of this section in order to provide payment of such federal benefits to individuals who have exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor shall, by executive order, trigger extended benefits on if the criteria of subsection (a)(2) of this section are otherwise met.

(j) For weeks of unemployment beginning after March 6, 1993, and until conformity with the federal-state extended unemployment compensation act of 1970, as amended, requires otherwise, the eligibility requirements in subsections (a)(10) and (c)(4) of this section are suspended. Except where inconsistent with the provisions of this section, the eligibility requirements of section 72-1366, Idaho Code, applicable to claims for regular benefits shall apply in lieu of the suspended provisions.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 8, 1993.

CHAPTER 11
(H.B. No. 18)

AN ACT

RELATING TO BEE INSPECTION; AMENDING SECTION 22-2518, IDAHO CODE, TO

REDEFINE BEE DISEASE, ALPHABETIZE AND RENUMBER THE LIST OF DEFINITIONS; AND AMENDING SECTION 22-2520, IDAHO CODE, TO PROVIDE FOR AUTHORITY TO ESTABLISH TOLERANCES OF BEE DISEASES ALLOWABLE IN APIARIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-2518, Idaho Code, be, and the same is hereby amended to read as follows:

22-2518. DEFINITIONS. The following terms shall be construed respectively when used in this act to mean:

(~~a~~1) "Apiary" any place where one or more colonies of bees are kept, or one or more hives containing honey combs or bee combs are kept.

(~~e~~2) "Bee diseases" ~~American or European foulbrood, sacbrood, bee paralysis or any other disease or abnormal condition of egg, larval, pupa or adult stages of bees~~ means a condition of a colony of bees wherein sufficient numbers of individual bees are afflicted by or infested with bacterial, fungal, viral, parasitic, or other organisms to the extent that the well-being of the colony is affected. Specific diseases shall be determined by regulation.

(~~d~~3) "Bees" any stage of common honey bee, Apis mellifera L.

(~~f~~4) "Colony" the hive and bees therein with or without extra supers.

(~~j~~5) "Comb" includes all materials which are normally deposited into hives by bees. It does not include extracted honey or royal jelly, trapped pollen and processed beeswax.

(~~m~~6) "Commercial beekeeper" a person engaged in the management of honey bees for their products and for pollination services.

(~~i~~7) "Director" the director of the Idaho department of agriculture or his designated agent.

(~~b~~8) "Equipment" hives, supers, frames, veils, gloves or any apparatus, tools, machines or other devices used in the handling and manipulation of bees, wax and hives, and shall also include any containers for honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

(~~c~~9) "Hive" frame, hive, box, barrel, log gum, skep, or any other receptacle or container, natural or artificial, or any part thereof, which may be used as a domicile for bees.

(~~l~~10) "Hobbyist beekeeper" a person engaged in the management of honey bees for pleasure and whose stock does not exceed fifty (50) colonies.

(~~g~~11) "Persons" individuals, associations, partnerships and corporations.

(~~k~~12) "Qualified bi-state beekeeper" a person who is a bona fide registered beekeeper and resident of and taxpayer of the state of Idaho, owning a bee yard or bee yards in both Idaho and another state, whose headquarters are in the state of Idaho.

(~~h~~13) "Queen apiary" any apiary or premises in which queen bees are reared or kept for sale or gift.

SECTION 2. That Section 22-2520, Idaho Code, be, and the same is

hereby amended to read as follows:

22-2520. DUTIES OF THE DIRECTOR IN CONTROLLING THE SPREAD OF DISEASE. When the director shall be notified of the existence in any apiary of the disease known as foulbrood or any other transmissible disease or pest of bees or items prohibited in section 22-2521, Idaho Code, he shall conduct appropriate investigations to the extent that the resources provided by this act support. If the investigation establishes the presence of such transmissible disease or pest, the director shall order abatement by methods which he shall prescribe. These methods may include destruction of the infested bees and contaminated equipment. Infested colonies or other equipment may not be removed from the premises on which they are found without written permission of the director. The director may, by regulation, establish tolerances of regulated bee diseases allowable in apiaries.

Approved March 9, 1993.

CHAPTER 12
(H.B. No. 19)

AN ACT

RELATING TO COMMERCIAL FEEDSTUFFS; AMENDING SECTION 25-2717, IDAHO CODE, TO ALPHABETIZE THE LIST OF DEFINITIONS, CORRECT TERMINOLOGY, UPDATE CURRENT DEFINITIONS, AND ADD NEW DEFINITIONS; AMENDING SECTION 25-2718, IDAHO CODE, TO REMOVE THE DETAILED LABEL REQUIREMENTS, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 25-2719, IDAHO CODE, TO REMOVE OLD LABEL REQUIREMENTS, UPDATE GENERAL LABEL REQUIREMENTS, TO CORRECT TERMINOLOGY AND PROVIDE AUTHORITY FOR SPECIFIC REQUIREMENTS TO BE DETERMINED THROUGH REGULATION; AMENDING SECTION 25-2720, IDAHO CODE, TO CORRECT TERMINOLOGY, ESTABLISH WHO IS RESPONSIBLE FOR THE PAYMENT OF INSPECTION FEES, AND TO CORRECT GRAMMATICAL ERRORS; AMENDING SECTION 25-2721, IDAHO CODE, TO CORRECT TERMINOLOGY, REDEFINE WHAT IS CONSIDERED TO BE AN ADULTERATED PRODUCT, AND COMPLY WITH FEDERAL LAW CONCERNING WHAT IS AN ADULTERATED PRODUCT; AMENDING SECTION 25-2722, IDAHO CODE, TO BETTER DEFINE A MISBRANDED PRODUCT, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 25-2723, IDAHO CODE, TO BETTER DEFINE DEPARTMENTAL AUTHORITY AND RESPONSIBILITY WITH RESPECT TO INSPECTIONS, SAMPLING, AND ANALYSIS OF COMMERCIAL FEEDS, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 25-2725, IDAHO CODE, TO CLARIFY AND ALLOW FOR THE AUTHORITY TO REQUIRE FEED TO BE WITHDRAWN FROM SALE AND THE CHANNELS OF DISTRIBUTION, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 25-2726, IDAHO CODE, TO INCREASE THE MISDEMEANOR PENALTY AUTHORITY, TO PROVIDE FOR CIVIL PENALTY AUTHORITY, AND TO CORRECT TERMINOLOGY; AND AMENDING CHAPTER 27, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2728, IDAHO CODE, TO ALLOW THE DIRECTOR TO ENTER INTO COOPERATIVE AGREEMENTS WITH OTHER ENTITIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-2717, Idaho Code, be, and the same is hereby amended to read as follows:

25-2717. DEFINITIONS OF WORDS AND TERMS. When used in this ~~act~~ chapter:

a. The term "brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

~~d~~b. The term "commercial feed" means all materials or combination of materials which are distributed or intended for distribution for use as feed, or for mixing in feed for poultry and animals other than man except:

1. Unmixed whole seeds ~~or processed~~ and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 25-2721, Idaho Code.

2. Seeds mixed and planted as such mixture, grown and harvested as one (1) crop and processed as one (1) mixture.

3. All hay except commercially dehydrated legumes and grasses.

4. Whole or ground straw, stover, silage, cobs, husks, hulls, wet beet pulp, pea screenings and beet discard molasses when not mixed with other materials.

The director, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities, and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed with other materials, and are not adulterated according to the provisions of section 25-2721, Idaho Code.

c. The term "contract feeder" means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined, all or in part, by feed consumption, mortality, profits, or amount or quality of product.

~~k~~d. The term "~~C~~customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser.

e. The term "~~brand~~department" means the ~~term, design, or trademark and other specific designation under which an individual commercial feed is distributed in this state~~ Idaho department of agriculture.

f. The term "director" means the director of the Idaho department of agriculture or the director's authorized agent.

~~b~~g. The term "distribute" means to offer for sale, sell, barter, or otherwise supply commercial feeds or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

h. The term "distributor" means any person who distributes.

i. The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

j. The term "feed ingredient" means each of the constituent materials making up a commercial feed.

~~f~~k. The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

l. The term "labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrapper, or accompanying such commercial feed.

m. The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

n. The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~i~~o. The term "official sample" means ~~any~~ sample of commercial feed taken by the ~~commissioner~~ director or ~~his~~ an authorized agent in accordance with the provisions of section 25-2723, Idaho Code.

~~h~~p. The term "percent" or "percentage" means percentage by weight.

~~a~~q. The term "person" includes individual, partnership, corporation, firm, association, and agent.

r. The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

s. The term "pet food" means any commercial feed prepared and distributed for consumption by dogs and cats.

t. The term "product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

u. The term "purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

v. The term "purchaser" means a person who takes by purchase.

w. The term "registrant" means that person, manufacturer, guarantor, or distributor who registers a product or products according to the provisions of section 25-2718, Idaho Code.

~~c~~x. The term "sell" or "sale" includes exchange.

y. The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

z. The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~g~~aa. The term "ton" means a net weight of two thousand (2,000) pounds avoirdupois.

~~j~~bb. Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular.

SECTION 2. That Section 25-2718, Idaho Code, be, and the same is hereby amended to read as follows:

25-2718. REGISTRATION. a. Each type of commercial feed except customer-formula feed shall be registered by the person who manufactures or distributes ~~said~~ feed ~~to--a--wholesaler--or--to--an--ultimate dealer~~ within the state of Idaho before being offered for sale, sold, or otherwise distributed in this state. The application for registration shall be submitted to the director on forms furnished by the

department of agriculture, and shall be accompanied by a fee of five dollars ($5.00), except that those feeds sold in packages of ten (10) pounds or less shall be registered for a fee of twenty-five dollars ($25.00), and shall also be accompanied by a label describing the product, unless such label has not been altered since the last registration of the product. A label shall continue in effect unless it is canceled or changed by the registrant or unless canceled by the department of agriculture pursuant to subsection d of this section. All fees paid to the department of agriculture provided for in this section shall be paid to the state treasury, and placed in the commercial feed and fertilizer fund. Upon approval by the director a copy of the registration shall be furnished to the applicant. All registrations expire on September 30 of each year. ~~The labels accompanying the application shall include the following information:~~

~~1.--The name and principal address of the person guaranteeing--the commercial feed;~~

~~2.--The--name--or--brand--under which the commercial feed is to be sold;~~

~~3.---The guaranteed analysis, listing--the--minimum--percentage--of crude--protein,--minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list--shall--include the--following if added: minimum and maximum percentage of calcium (Ca), minimum percentage of phosphorous (P), minimum percentage of iodine (I), and minimum and maximum percentages--of--salt--(NaCl). Other--nutritional substances or elements, determinable by laboratory methods, may be guaranteed by permission of the--director--by and with the advice of the director of the agricultural experiment station.--When--any such other items are guaranteed, they shall be subject to inspection and analysis in accordance with the--methods and--regulations--that may be prescribed by the director. Products sold solely as mineral and/or vitamin supplements--and--guaranteed as specified in this section need not show guarantees for protein, fat and fiber;~~

~~4.--The--common--or--usual English name of each ingredient used in the manufacture of the commercial feed. The director by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or he may exempt such commercial feeds, or any group thereof, from this requirement of an--ingredient--statement--if he finds that such statement is not required in the interest of consumers;~~

b. A distributor shall not be required to register any brand of commercial feed which is already registered under the provisions of this ~~act~~ chapter by another person.

c. Changes in the guarantee of either chemical or ingredient composition of a commercial feed may be permitted provided satisfactory evidence is submitted showing that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

d. The director is empowered to refuse registration of any application not in compliance with all provisions of this ~~act~~ chapter and to cancel any registration when it is subsequently found to be in violation of any provision of ~~the act~~ this chapter or when ~~he~~ the director has satisfactory evidence that the registrant has used fraud-

ulent or deceptive practices in attempted evasion of the provisions of ~~the act~~ this chapter or regulations thereunder.

Provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the director.

SECTION 3. That Section 25-2719, Idaho Code, be, and the same is hereby amended to read as follows:

25-2719. LABELING. A commercial feed shall be labeled as follows:

a. ~~Any~~ commercial feed, except a customer-formula feed, offered for sale or sold or otherwise distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form ~~the net weight and the information required by items 1, 2, 3 and 4 of paragraph (a) of section 25-2718~~, a label bearing the following information:

1. The net weight (may be stated parenthetically in metric units in addition to the required avoirdupois).
2. The product name and the brand name, if any, under which the commercial feed is distributed.
3. The guaranteed analysis stated in such terms as the director, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods, such as the methods published by the association of official analytical chemists.
4. The common or usual name of each ingredient used in the manufacture of the commercial feed: provided that the director, by regulation, may permit the use of a collective term for a group of ingredients which perform a similar function, or the director may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the director finds that such statement is not required in the interest of consumers.
5. The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.
6. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director may require, by regulation, as necessary for their safe and effective use.
7. Such precautionary statements as the director, by regulation, determines are necessary for the safe and effective use of the commercial feed.

b. ~~If distributed in bulk, a written or printed statement of the net weight and the information required by items 1, 2, 3 and 4 of paragraph (a) of section 25-2718, shall accompany delivery and be furnished to the purchaser~~ A customer-formula feed shall be accompanied by a label invoice, delivery slip, or other shipping document bearing the following information:

1. Name and address of the manufacturer.
2. Name and address of the purchaser.
3. Date of delivery.
4. The product name and net weight (may be stated parenthetically in metric units in addition to the required avoirdupois) of each commercial feed and the guaranteed analysis, listing the minimum

percentage of crude protein, minimum percentage of crude fat, and the maximum percentage of crude fiber.

5. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the director may require, by regulation, as necessary for their safe and effective use.

6. The directions for use and precautionary statements as required by regulation.

7. If a drug-containing product is used:

i. The purpose of the medication (claim statement).

ii. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with regulation.

SECTION 4. That Section 25-2720, Idaho Code, be, and the same is hereby amended to read as follows:

25-2720. INSPECTION FEES. a. There shall be paid to the department of agriculture for all commercial feeds ~~offered for sale, sold or otherwise~~ distributed in this state, an inspection fee at the rate of not more than twenty cents (20¢) per ton, by the registrant except that a person other than the registrant may assume liability for the inspection fee. Fees so collected shall be paid into the state treasury and placed in the "Commercial Feed and Fertilizer Fund" and shall be used to pay the costs of inspection, sampling, analysis, and other expenses necessary for the administration of this ~~act~~ chapter. Payment of inspection fees is subject to the following:

1. No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

2. No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

3. No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds which are registered. If the fee has already been paid, credit shall be given for such payment.

4. ~~Provided, that s~~Sales of commercial feeds to manufacturers or exchanges between them are hereby exempted if the commercial feeds so sold or exchanged are used solely in the manufacture of feeds which are registered.

5. In the case of a commercial feed which is distributed in the state in packages of ten (10) pounds or less, an annual registration fee of twenty-five dollars ($25.00) per product shall be paid in lieu of an inspection fee.

6. The minimum inspection fee shall be one dollar ($1.00) per quarter.

b. Payment of the inspection fee shall be evidenced by a statement made under oath in due form of law, of commercial feed distributed together with documents showing that fees corresponding to the tonnage were received by the director. Every person required to register in accordance with section 25-2718, Idaho Code, shall:

1. File, not later than the last day of January, April, July, October of each year, a quarterly statement under oath, setting

forth the number of net tons of commercial feeds distributed in this state during the preceding three (3) month period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph ~~(a)~~ of this section.

2. Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state and the director shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

~~c.--Whenever any such person shall have paid the fee herein--provided--for--no--other--person shall be required to pay said fee on the same feeding stuffs.~~

~~d.--In the case of commercial feeds which are distributed--in--the state--in--packages of ten (10) pounds or less, an annual registration fee of twenty five dollars ($25.00) per product shall be paid in--lieu of an inspection fee.~~

~~e.--The--minimum--inspection--fee--shall be one dollar ($1.00) per quarter.~~

SECTION 5. That Section 25-2721, Idaho Code, be, and the same is hereby amended to read as follows:

25-2721. ADULTERATION. No person shall distribute an adulterated commercial feed. A commercial feed shall be deemed to be adulterated:

a. If it bears or contains any poisonous~~,~~ or deleterious ~~or--non-nutritive--ingredient has been added in sufficient amount to~~ substance which may render it injurious to health, but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under the provisions of this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to ~~animal~~ health.

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder other than one which is:

1. A pesticide chemical in or on a raw agricultural commodity; or

2. A food additive.

c. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on

such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408 (a) of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

e. If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder.

f. If it is, or it bears or contains any new animal drug which is unsafe within the meaning of section 512 of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder.

~~b~~g. If any valuable constituent has been in whole or part omitted or abstracted therefrom or any less valuable substance substituted therefor.

~~c~~h. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

~~d~~i. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is clearly and prominently stated on the label.

j. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the director to assure that the drug meets the requirements of this chapter as to safety. In promulgating such regulations, the director shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the director determines that they are not appropriate to the conditions which exist in this state.

k. If it contains viable weed seeds in amounts exceeding the limits which the director shall establish by rule or regulation.

SECTION 6. That Section 25-2722, Idaho Code, be, and the same is hereby amended to read as follows:

25-2722. MISBRANDING. No person shall distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

a. If its labeling is false or misleading in any particular.

b. If it is distributed under the name of another feed.

c. If its container is not labeled as required in section 25-2719, Idaho Code, and in regulations prescribed under this ~~act~~ chapter.

d. If it purports to be, or is represented as, a commercial feed ~~for--which--a--definition-of-identity-and-standard-of-quality-has-been prescribed-by-regulation-unless-it-conforms--to--such--definition--and standard~~, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regula-

tion by the director.

e. If any word, statement, or other information required by or under authority of this ~~act~~ chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

f. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner determines to be, and by regulations prescribes as necessary in order fully to inform purchasers as to its value for such uses.

SECTION 7. That Section 25-2723, Idaho Code, be, and the same is hereby amended to read as follows:

25-2723. INSPECTION, SAMPLING, ANALYSIS. a. ~~It shall be the duty of the director, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial feeds distributed within this state at such time and place to such an extent as he may deem necessary to determine whether such commercial feeds are in compliance with the provisions of this act. The director, individually or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial feeds subject to the provisions of this act and the rules and regulations pertaining thereto~~ For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized:

(1) To enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds, and

(2) To inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein.

The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under the provisions of this chapter. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

b. ~~The methods of s~~Sampling and analysis shall be ~~those adopted by the director from sources such as the JOURNAL of~~ conducted in accordance with methods published by the association of official ~~agricultural~~ analytical chemists, or in accordance with other generally recognized methods.

c. The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided ~~solely~~ by the official sample as defined in paragraph (~~i~~o) of section 25-2717, Idaho Code, and obtained and analyzed as provided for in ~~paragraph (b) of this~~ section 25-2723, Idaho Code.

d. If the owner of any factory, warehouse, or establishment described in subsection a of this section, or authorized agent, refuses to admit the director or an authorized agent to inspect in accordance with subsections a and e of this section, the director is authorized to obtain from any state court of competent jurisdiction a warrant directing such owner or agent to submit the premises described in such warrant to inspection.

e. For the enforcement of this chapter, the director or a duly authorized agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

f. The results of all analyses of official samples shall be forwarded by the director to the registrant and to the purchaser. When the inspection and analysis of an official sample indicate a commercial feed has been adulterated or misbranded~~, the results of analysis shall be forwarded by the director to the distributor,~~ and u~~U~~pon request by the registrant or purchaser within thirty (30) days following the receipt of the analysis the director shall furnish to the registrant a portion of the sample concerned.

SECTION 8. That Section 25-2725, Idaho Code, be, and the same is hereby amended to read as follows:

25-2725. DETAINED COMMERCIAL FEEDS. a. "Withdrawal from sale or distribution" order. When the director or ~~his~~ an authorized agent has reasonable cause to believe a commercial feed is being distributed in violation of any of the provisions of this ~~act~~ chapter or of any of the prescribed regulations under this ~~act~~ chapter, ~~he~~ the director may issue and enforce a written or printed "withdrawal from sale or distribution" order warning the distributor not to dispose of the feed in any manner until written permission is given by the director or the court. The director shall release the commercial feed so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within thirty (30) days, the director shall begin proceedings for condemnation.

b. Condemnation and confiscation. Any lot of commercial feed not in compliance with the provisions of this ~~act~~ chapter shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of the provisions of this ~~act~~ chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state: ~~P~~provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed

or for permission to process or relabel said commercial feed to bring it into compliance with the provisions of this ~~act~~ chapter.

SECTION 9. That Section 25-2726, Idaho Code, be, and the same is hereby amended to read as follows:

25-2726. PENALTIES FOR VIOLATIONS. a. Any person convicted of violating any of the provisions of this ~~act~~ chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said director or ~~his~~ a duly authorized agent in performance of ~~his~~ their duty in connection with the provisions of this ~~act~~ chapter, shall be adjudged guilty of a misdemeanor and shall be fined not more than ~~one~~ five hundred dollars ($~~1~~500) for the first violation, and not ~~less than one hundred dollars ($100) or~~ more than ~~three~~ one thousand five hundred dollars ($~~3~~1,500) for a subsequent violation. In all prosecutions under the provisions of this ~~act~~ chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the director shall be accepted as prima facie evidence of the composition.

b. Any person who violates or fails to comply with any of the provisions of this chapter or any regulations promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than five hundred dollars ($500) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the director is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the director has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule or regulation shall be remitted to the feed and fertilizer account.

c. Nothing in this ~~act~~ chapter shall be construed as requiring the director or ~~his~~ a duly authorized representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the act when ~~he~~ the director believes that the public interest will be best served by a suitable notice of warning in writing.

~~c~~d. It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the director reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the director.

~~d~~e. The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this

~~act~~ chapter or any rules or regulation promulgated under the ~~act~~ chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

SECTION 10. That Chapter 27, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-2728, Idaho Code, and to read as follows:

25-2728. COOPERATION WITH OTHER ENTITIES. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, private associations, and commercial feed manufacturers in order to carry out the purpose and provisions of this chapter.

Approved March 9, 1993.

CHAPTER 13
(H.B. No. 20)

AN ACT

RELATING TO BRUCELLOSIS; AMENDING SECTIONS 25-601, 25-602, 25-603, 25-604, 25-605, 25-606, 25-607, 25-608, 25-609, 25-610, 25-611, 25-612, 25-613, 25-614, 25-614A, 25-615 AND 25-616, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE AND EXPAND COVERAGE FOR CONTROL OF BRUCELLOSIS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-601, Idaho Code, be, and the same is hereby amended to read as follows:

25-601. DUTIES OF DEPARTMENT OF AGRICULTURE. The department of agriculture (hereinafter referred to as department) is hereby authorized to cooperate with veterinary services of the United States department of agriculture (hereinafter referred to as veterinary services), for the purpose of eradication of ~~Bang's disease~~ brucellosis among cattle and other animals which shall include, but not be limited to, other bovidae, captive cervidae, captive antilocapridae, camelidae and suidae in the state of Idaho. The department shall make rules and regulations for the administration of this ~~act~~ chapter and provide therein for the manner, method and system of testing cattle and other animals for ~~Bang's disease~~ brucellosis in cooperation with veterinary services for the eradication of said disease, and for such preventive measures as may be deemed necessary to carry out the cooperative work for the eradication of ~~Bang's disease~~ brucellosis among cattle and other animals in this state.

SECTION 2. That Section 25-602, Idaho Code, be, and the same is hereby amended to read as follows:

25-602. DUTIES OF COUNTY COMMISSIONERS. The department is hereby authorized to cooperate with veterinary services and with the boards of county commissioners of this state (hereinafter referred to as commissioners), and it is hereby made the duty of the commissioners to cooperate with said department and veterinary services for the purpose of preventing reintroduction ~~and/~~or eradicating said disease from Idaho cattle and other animals under the provisions of this ~~act~~ chapter and the rules and regulations of the department.

SECTION 3. That Section 25-603, Idaho Code, be, and the same is hereby amended to read as follows:

25-603. BRUCELLOSIS ERADICATION AREA. The state of Idaho and its counties are engaged in the eradication of ~~Bang's disease~~ brucellosis from the cattle and other animals within this state and the movement of cattle and other animals is prohibited except in conformity with the rules and regulations of the department promulgated for the purpose of preventing the introduction of ~~Bang's disease~~ brucellosis into an Idaho county from any other county or state. Any person, firm, or corporation, who shall bring into the state or such county any cattle or other animals in violation of the rules and regulations of the department, shall upon conviction be fined not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each animal brought into such county in violation of such rules and regulations. The department shall issue permits authorizing the moving of cattle or other animals to and from and through and across such areas for exhibition, sale, or feeding purposes and for transporting or moving cattle or other animals from one (1) locality to another outside of such areas. Such permits shall be issued under such reasonable rules and regulations as may be promulgated from time to time by the department, with due regard to the convenience of the livestock owners and the protection of livestock within the areas established as herein provided for the eradication of ~~Bang's disease~~ brucellosis.

SECTION 4. That Section 25-604, Idaho Code, be, and the same is hereby amended to read as follows:

25-604. EXTENT OF ERADICATION AREA -- SUPERVISION AND QUARANTINE OF PREMISES. The area designated for the control of ~~Bang's disease~~ brucellosis may consist of the entire state, a portion of the state, entire county or part of the county, but if less than the entire county the boundary of the area shall be clearly defined in the order for the establishment of such area. When the department has established an area for the control of such disease, within a county, the commissioners of such county shall be notified and assist in the dissemination of the order and in policing the movement of livestock and other animals into and out of such area.

SECTION 5. That Section 25-605, Idaho Code, be, and the same is hereby amended to read as follows:

25-605. ~~BANG'S DISEASE~~ BRUCELLOSIS TESTS. The entire state of Idaho is in the process of eradicating ~~Bang's disease~~ brucellosis in

accordance with the provisions of this ~~act~~ chapter and it shall be the duty of each owner of cattle ~~owner~~ or other animals to allow the ~~Bang's--disease~~ brucellosis test to be made upon any and all cattle or other animals owned by him within the state and to pen such cattle or other animals in suitable pens and restrain them for the test whenever directed to do so in writing by the department or its representative, and each day the owner or person in charge of such cattle or other animals shall fail or refuse to allow such test, or shall fail and refuse to pen and restrain said cattle or other animals as requested by the department, shall constitute a separate offense and the owner and person in charge of said cattle or other animals shall, upon conviction for failure to comply with such request, each be fined not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000); provided that no owner of cattle ranging on United States forest reserve or on the public domain shall be directed to pen his cattle for ~~Bang's disease~~ a brucellosis test between the dates of April 1 and December 1 of any year.

SECTION 6. That Section 25-606, Idaho Code, be, and the same is hereby amended to read as follows:

25-606. SALE OF REACTORS FOR SLAUGHTER -- PAYMENTS TO OWNERS. The owner of cattle or other animals which have shown a positive reaction to the ~~Bang's disease~~ brucellosis test shall sell such reactors under the direction of the department at a public auction market for immediate slaughter at a public slaughtering establishment where federal or state post mortem inspection is maintained; or the department may authorize such slaughter upon the owner's property or other place under the direction of said department. After such sale and slaughter the department is authorized to pay such owner out of funds appropriated by the legislature for that purpose, an indemnity not to exceed twelve dollars and fifty cents ($12.50) for any grade animal or more than twenty-five dollars ($25.00) for any purebred animal. No compensation shall be made until said owner complies with the rules and regulations of the department. Appraisals and reports of salvage are not required. Proof of destruction is required. Post mortem reports will be accepted as proof of slaughter.

SECTION 7. That Section 25-607, Idaho Code, be, and the same is hereby amended to read as follows:

25-607. DISPOSAL OF POSITIVE REACTORS RESTRICTED. It shall be unlawful for any positive reactor to the ~~Bang's--disease~~ brucellosis test, in said cooperative eradication work, to be slaughtered or to be otherwise disposed of except under the direction of the department, and any person who kills or destroys or removes the carcass of any such positive reactor without permission from the department, from the premises whereon said animal was tested, shall be fined the same as if he had violated section 25-603, Idaho Code.

SECTION 8. That Section 25-608, Idaho Code, be, and the same is hereby amended to read as follows:

25-608. IDENTIFICATION OF TESTED ANIMALS. It shall be the duty of all veterinarians in the state of Idaho, at the time of taking a blood sample from any animal for the purpose of having such blood sample tested for ~~Bang's--disease~~ brucellosis, to record the number of the official eartag or other official identification, if present or affix an official metal eartag bearing a number of identification on the right ear of said animal, or affix other official identification to the animal, except that in the case of registered cattle or other animals a legible tattoo number may suffice for identification.

SECTION 9. That Section 25-609, Idaho Code, be, and the same is hereby amended to read as follows:

25-609. OFFICIAL ~~BANG'S~~ BRUCELLOSIS TEST CHARTS -- TRANSMISSION OF COPIES TO LABORATORIES. It shall be the duty of all veterinarians to transmit to the laboratory conducting the ~~Bang's-disease~~ brucellosis test on blood samples of cattle or other animals, three (3) copies of the official ~~Bang's~~ brucellosis test charts, showing the eartag, other official identification or tattoo number of each individual animal from which the samples were taken opposite the appropriate tube number, and designate on the chart the purpose of the test,--whether for annual, addition to tested or certified herd, local or interstate shipment. Such charts shall be transmitted at the same time the samples are transmitted to the laboratory.

SECTION 10. That Section 25-610, Idaho Code, be, and the same is hereby amended to read as follows:

25-610. BRANDING OF POSITIVE REACTORS -- REVOKING ACCREDITATION OF VETERINARIANS FOR NONCOMPLIANCE. It shall further be the duty of each veterinarian in the state of Idaho, upon the receipt of such ~~Bang's~~ brucellosis test chart from the laboratory, to brand clearly or have branded in his presence with a letter "B" not less than three (3) inches high, upon the left jaw, and place an official ~~Bang's~~ brucellosis reactor tag in the left ear of any animals which show a positive reaction to the test in accordance with the code of federal regulation definition for a reactor. A statement that such reactors have been so branded will be made on the said chart and a copy mailed to the department within forty-eight (48) hours after receipt of said chart. A copy of any ~~Bang's~~ brucellosis test chart which does not show positive reactors shall also be mailed to the department within forty-eight (48) hours after receipt of said chart. Failure on the part of any veterinarian authorized by law to make blood tests, appraise reactors, vaccinate cattle or other animals, or issue quarantines shall be cause for revocation of accreditation if he fails to comply with all provisions of this law, and such veterinarian shall no longer be allowed to perform any duties for the state of Idaho until he has been reinstated.

SECTION 11. That Section 25-611, Idaho Code, be, and the same is hereby amended to read as follows:

25-611. LABORATORY TESTS -- WHERE AND BY WHOM TAKEN. All labora-

tory tests of blood samples taken from cattle or other animals in certified ~~Bang's~~ brucellosis-free herds, cattle or other animals in cooperative herds in process of certification, additions to certified free and process herds, and all other ~~cattle~~ animals on which an official test is required, including cattle or other animals intended for interstate shipment and exhibition at livestock fairs, expositions and shows, shall be made in the laboratory of the Idaho department of agriculture and such blood samples for official test may only be taken by persons approved by the department and the United States department of agriculture, veterinary services.

SECTION 12. That Section 25-612, Idaho Code, be, and the same is hereby amended to read as follows:

25-612. DUTY OF OWNER TO HAVE REACTORS SLAUGHTERED. It shall be the duty of the owner of any cattle or other animals which have been officially classified as reactors to the ~~Bang's~~ brucellosis disease test in accordance with the provisions of this ~~act~~ chapter, after receiving a written order and permit to move such ~~cattle~~ animals for immediate slaughter, to move such ~~cattle~~ animals or cause the same to be moved to the point designated in the order and permit, and to cause such ~~cattle~~ animals to be slaughtered in accordance with the provisions of this ~~act~~ chapter not later than fifteen (15) days from the date the test was made.

SECTION 13. That Section 25-613, Idaho Code, be, and the same is hereby amended to read as follows:

25-613. VACCINATION METHOD OF CONTROL. The owner of any cattle who desires to have such cattle vaccinated for protection against ~~B~~brucellosis shall have such cattle vaccinated by a veterinarian who is licensed and accredited in the state of Idaho. Except in the case of vaccination of adult cattle which vaccination shall be performed only under the direct supervision of state or federal regulatory personnel. No person, firm, or corporation shall sell, give away, or in any manner place in the hands of any owner or caretaker of cattle any ~~B~~brucellosis vaccine, and only licensed and accredited veterinarians may inject ~~Bang's~~ brucellosis vaccine into any cattle.

SECTION 14. That Section 25-614, Idaho Code, be, and the same is hereby amended to read as follows:

25-614. INDEMNITY PAYMENTS RESTRICTED. No indemnity shall be paid to any owner of cattle ~~owner~~ or other animals for any positive reacting cattle or other animals unless such cattle or other animals are native Idaho cattle or other animals or have been imported in compliance with existing Idaho rules and regulations.

SECTION 15. That Section 25-614A, Idaho Code, be, and the same is hereby amended to read as follows:

25-614A. HERD DEPOPULATION. In order to facilitate the advancement of the state of Idaho to ~~B~~brucellosis class free and to maintain

the state in this category, the division of animal industries is granted authority to condemn ~~B~~brucellosis infected herds and to require the destruction of such infected herds. The board of examiners is authorized and empowered upon the recommendation of the division, to reimburse the owner by cash payment for ~~B~~brucellosis affected or exposed animals which have been appraised and slaughtered by direction of the division, provided that the state shall only pay the difference between appraised price less federal indemnity and salvage for any ~~livestock~~ cattle or other animals slaughtered under the provisions of this section. Appraisals shall be performed by a team made up of an animal health representative, the owner and a person with experience in ~~cattle~~ marketing cattle or other animals. However, the director or his designee may grant a hearing to any person under such rules and regulations as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when appraisal price is in dispute. An appeal may be taken from the decision of the director or his designee under the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 16. That Section 25-615, Idaho Code, be, and the same is hereby amended to read as follows:

25-615. BRANDING AND ISOLATION OF POSITIVE REACTORS. All cattle or other animals showing a positive reaction to the ~~Bang's disease~~ brucellosis test in the cooperative work, whether in individual herds or in cooperative areas, shall immediately after being branded in accordance with the provisions of this ~~act~~ chapter, be isolated from all other ~~cattle~~ brucellosis susceptible animals until such time as they are moved under permit issued by the department as provided in section 25-603, Idaho Code.

SECTION 17. That Section 25-616, Idaho Code, be, and the same is hereby amended to read as follows:

25-616. PENALTY FOR VIOLATIONS OF SECTIONS 25-608 -- 25-615. Any person, firm, or corporation who shall fail to do or perform, or who shall not permit another to do or perform, any act which he or it is required to do or perform under sections 25-608 through 25-615, Idaho Code, inclusive, or any of them, or who shall in any manner interfere with the compliance of said sections or any of them or any provisions thereof by any officer or representative of the department, veterinary services or commissioners, or who shall refuse to present or restrain any cattle or other animals for the purpose of branding under this act, or who shall remove any eartag from any ~~Bang's disease~~ brucellosis reactor, or who shall remove the eartag from any animal tested, identified or vaccinated for ~~Bang's disease~~ brucellosis and place such tag on or in the ear of another animal, or place a vaccination tag in the ear of an unvaccinated animal, shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each offense. For the purposes of this section, a person shall be charged with a separate offense for each animal he owns or possesses and which is found not to be in compliance with the provisions of sections 25-608 through 25-615, Idaho Code,

~~inclusive,~~ or any of them.

Approved March 9, 1993.

CHAPTER 14
(H.B. No. 21)

AN ACT
RELATING TO LIVESTOCK DISEASE CONTROL; AMENDING SECTIONS 25-402 AND 25-403, IDAHO CODE, TO EXPAND COMPENSATION COVERAGE FOR DESTROYED ANIMALS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-402, Idaho Code, be, and the same is hereby amended to read as follows:

25-402. COMPENSATION FOR DESTROYED CATTLE OR OTHER ANIMALS. When cattle, other bovidae, captive cervidae, captive antilocapridae, or camelidae are destroyed on account of tuberculosis as herein provided, compensation may be paid to the owner of such animals as provided by law; and, provided further, that in no case shall the state pay more than ~~twelve~~ twenty-five dollars ~~and fifty cents~~ ($~~12.50~~25.00) for a grade animal nor more than ~~twenty-five~~ fifty dollars ($~~25~~0.00) for a registered purebred animal and in no case shall the indemnity paid the owner by the state exceed one-third (1/3) the difference between appraised value and salvage value of the animals destroyed.

SECTION 2. That Section 25-403, Idaho Code, be, and the same is hereby amended to read as follows:

25-403. EXCEPTIONS. No payments shall be made for any cattle, other bovidae, captive cervidae, captive antilocapridae, or camelidae destroyed in the following cases:

a. If the owner does not disinfect the premises, etc., as directed by the state division or federal bureaus.

b. For any animal destroyed where the owner has not complied with all lawful quarantine regulations.

c. Animals reacting to a test not approved by the state division or federal bureaus.

d. Animals belonging to the state of Idaho or the United States government.

e. Animals brought into the state in violation of the state laws and regulations.

f. Animals which the owner, or claimant, knew to be diseased, or had notice thereof, at the time they came into their possession.

g. Animals which had the disease for which they were slaughtered, or which were destroyed by reason of exposure to the disease, at the time of their arrival in the state.

h. Animals which have not been within the state of Idaho for a period of at least one hundred and twenty (120) days prior to the dis-

covery of the disease.

i. Where the owner has failed to submit the necessary reports as required by this act.

Approved March 9, 1993.

CHAPTER 15
(H.B. No. 22)

AN ACT

RELATING TO TUBERCULOSIS FREE AREAS; AMENDING SECTIONS 25-301, 25-302, 25-303 AND 25-304, IDAHO CODE, TO EXPAND COVERAGE, TO PROVIDE PROPER NOMENCLATURE, AND TO PROVIDE DEFINITIONS; AMENDING SECTION 25-306, IDAHO CODE, TO UPDATE PENALTY PROVISIONS AND PROVIDE CONSISTENCY WITH OTHER PENALTY CODES; AMENDING SECTION 25-307, IDAHO CODE, TO EXPAND COVERAGE, AND TO PROVIDE PROPER NOMENCLATURE; AND AMENDING SECTION 25-308, IDAHO CODE, TO UPDATE THE QUARANTINE PENALTY CONSISTENT WITH OTHER PENALTY CODES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-301, Idaho Code, be, and the same is hereby amended to read as follows:

25-301. PETITION OF OWNERS IN AREA -- TESTING OF CATTLE AND OTHER ANIMALS. Whenever petitions signed by sixty percent (60%) or more of the cattle, other bovidae, captive cervidae, captive antilocapridae and camelidae owners, as designated by the last assessment rolls of the several taxing districts therein, who reside in any county, counties, or well-defined areas, which are segregated from other areas or separated from other areas by natural segregating boundary lines, such as mountain ranges, rivers or canyons, shall be presented to the department of agriculture, asking that all cattle, other bovidae, captive cervidae, captive antilocapridae and camelidae within such county, counties, or areas, be tested for tuberculosis, said department is hereby authorized to make such test in the manner prescribed ~~by~~ in sections 25-215, 25-216, 25-222 and 25-229, Idaho Code.

SECTION 2. That Section 25-302, Idaho Code, be, and the same is hereby amended to read as follows:

25-302. APPROPRIATION OF MONEYS. The county commissioners of such county, counties, or areas, shall appropriate as much money as they deem necessary for the control and eradication of any infectious, contagious or communicable disease of livestock or other animals or the carrier of the cause of such disease, and such funds shall be used in cooperation with the state division or federal ~~bureau of animal industry~~ department of agriculture in testing animals and disposing of such diseased animals disclosed by such tests, as provided for in this act.

SECTION 3. That Section 25-303, Idaho Code, be, and the same is

hereby amended to read as follows:

25-303. DESIGNATION OF FREE AREAS. When all cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae in such county, counties, ~~or~~ areas, or the entire state have been tested and the records of such test show the disease has been eradicated to a minimum of percent that the state division and federal ~~bureaus~~ department of agriculture in their regulations designate as free from disease, such county, counties, ~~or~~ well-defined areas, or the entire state shall be designated as "tuberculosis free areas."

SECTION 4. That Section 25-304, Idaho Code, be, and the same is hereby amended to read as follows:

25-304. BRINGING CATTLE OR OTHER ANIMALS INTO FREE AREA. No cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae shall be brought into any tuberculosis free county, counties, or areas, after the ~~tuberculin~~ tuberculosis test provided for herein shall have been completed therein, except in compliance with regulations promulgated by the state department of agriculture, division of animal industries, in cooperation with the county commissioners.

SECTION 5. That Section 25-306, Idaho Code, be, and the same is hereby amended to read as follows:

25-306. VIOLATION OF RULES AND REGULATIONS. ~~The violation of any of such~~ Any person, firm or corporation violating any of the provisions of this act or any rules and regulations made under and pursuant to the terms of this act ~~shall constitute~~ shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars ($100), nor more than five thousand dollars ($5,000) for each offense.

SECTION 6. That Section 25-307, Idaho Code, be, and the same is hereby amended to read as follows:

25-307. QUARANTINE WHEN OWNER REFUSES TO PERMIT TEST. The director of the department or administrator of the Idaho division of animal industries, or any deputy of such division, shall have the power to place any cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae under quarantine when any owner or caretaker of such ~~cattle~~ animals shall refuse to permit the tuberculin or other approved tuberculosis test to be applied to such ~~cattle~~ animals in the manner provided in sections 25-301 ~~to~~ through 25-306, Idaho Code~~,--inclusive~~. The notice of quarantine shall be in writing and any ~~cattle~~ animals described therein shall not be transported or moved in any manner from the premises described in the quarantine notice. It shall be unlawful to sell, give away, offer for sale or transport any milk, ~~or~~ milk products, or other products produced from the cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae described in such notice of quarantine. Such administrator or his deputy shall furnish one (1) copy of the quarantine notice to the owner

or caretaker of the cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae; the original of which notice shall be placed in the hands of the sheriff of the county in which such cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae are situated, and it shall be the duty of the sheriff to enforce the quarantine in accordance with such notice. The quarantine shall be removed whenever a satisfactory test has been made of the cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae described in said notice.

SECTION 7. That Section 25-308, Idaho Code, be, and the same is hereby amended to read as follows:

25-308. VIOLATION OF QUARANTINE. Any person, firm or corporation who shall violate any provisions of such quarantine shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars ($100), nor more than five thousand dollars ($5,000) for each offense.

Approved March 9, 1993.

CHAPTER 16
(H.B. No. 23)

AN ACT

RELATING TO DISEASES AMONG LIVESTOCK AND OTHER ANIMALS; AMENDING SECTIONS 25-202, 25-204, 25-208, 25-209, 25-211, 25-215, 25-217, 25-218, 25-221A AND 25-222, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTIONS 25-207, 25-211, 25-212 AND 25-221, IDAHO CODE, TO BROADEN SCOPE OF COVERAGE; AMENDING SECTION 25-210, IDAHO CODE, TO CLARIFY THE DEFINITION OF ANIMALS; AMENDING SECTION 25-213, IDAHO CODE, TO INCLUDE ADDITIONAL PRODUCTS; AMENDING SECTION 25-214A, IDAHO CODE, TO DEFINE LIVESTOCK; AMENDING SECTION 25-215, IDAHO CODE, TO ALLOW THE USE OF NEW TESTS; AMENDING SECTION 25-216, IDAHO CODE, TO EXPAND COVERAGE OF INDEMNITY; AMENDING SECTION 25-222, IDAHO CODE, TO DEFINE ANIMALS TO BE TESTED AND METHODS OF TESTING FOR TUBERCULOSIS AND DELETE CONFLICTING WORDING ON INDEMNITY; AMENDING SECTION 25-233, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE, EXPAND COVERAGE AND CORRECT PUNCTUATION; AND AMENDING SECTION 25-236, IDAHO CODE, TO MAKE POSSESSION OF CERTAIN SPECIES OF ANIMAL UNLAWFUL EXCEPT UNDER CERTAIN CONTROLLED CIRCUMSTANCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-202, Idaho Code, be, and the same is hereby amended to read as follows:

25-202. ADMINISTRATOR -- QUALIFICATIONS. The administrator of the division of animal industries in the department of agriculture shall be a competent, qualified graduate in good standing of an accredited

veterinary college recognized by the United States ~~bureau of animal industry~~ department of agriculture and a licensed veterinarian of the state of Idaho.

SECTION 2. That Section 25-204, Idaho Code, be, and the same is hereby amended to read as follows:

25-204. VETERINARIANS AND LIVESTOCK INSPECTORS. When it shall be deemed necessary by reason of the prevalence of disease among any of the animals of this state, the division may employ deputy state veterinarians and livestock inspectors to assist in its control and eradication.

Veterinarians so employed shall be competent, qualified graduates in good standing of a veterinary college recognized by the United States ~~bureau of animal industry~~ department of agriculture. Each veterinarian shall receive a per diem not to exceed the reasonable value of his services and actual and necessary traveling expenses incurred in the performance of his duties, to be approved by the state veterinarian and director and paid as other like claims.

Livestock inspectors shall be competent and qualified to inspect and dip sheep for scabies, to supervise the cleaning and disinfecting of premises where any contagious, infectious or communicable disease has existed, and to perform such other duties as may be imposed by the division. They shall receive a per diem and actual and necessary traveling expenses incurred in the performance of their duties.

SECTION 3. That Section 25-207, Idaho Code, be, and the same is hereby amended to read as follows:

25-207. MOVEMENT AND DISEASE CONTROL OF LIVESTOCK AND OTHER ANIMALS -- RULES AND REGULATIONS. The division shall have authority to make and promulgate rules and regulations for the movement and disease control of livestock and other animals into, within and out of this state as may from time to time be deemed necessary; and to compensate the state for the expense of carrying out such regulations the division may collect a reasonable fee to be by it fixed not exceeding the actual cost to the state, such fees to be deposited with the state treasurer to the credit of the livestock disease control and T.B. indemnity fund. ~~No certificate shall be issued or no fee charged by a state veterinarian or livestock inspector unless he has himself actually examined the animals in question. Failure to do so shall be considered a misdemeanor and subject to a fine not to exceed the sum of one hundred dollars ($100).~~

SECTION 4. That Section 25-208, Idaho Code, be, and the same is hereby amended to read as follows:

25-208. COOPERATION WITH FEDERAL GOVERNMENT. The governor is hereby authorized to accept upon behalf of the state, rules and regulations prepared by the secretary of agriculture and under and in pursuance of section 3 of the Act of Congress, May 29, 1884, entitled: "An act for the establishment of the bureau of animal industry to prevent the exportation of diseased cattle and provide means for the sup-

pression and extirpation of pleuropneumonia and other contagious diseases among domestic animals;" and the state shall cooperate with the authorities of the United States ~~bureau of animal industry~~ department of agriculture in the enforcement of the provisions of said act, and of the Act of March 3, 1905, entitled: "An act to enable the secretary of agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other livestock therefrom for other purposes."

SECTION 5. That Section 25-209, Idaho Code, be, and the same is hereby amended to read as follows:

25-209. POWERS OF FEDERAL OFFICERS. When the governor has requested through the United States secretary of agriculture and accepted the cooperation of the United States ~~bureau of animal--industry~~ department of agriculture, for the purpose of controlling or eradicating any contagious, infectious or communicable disease that may exist among any of the animals of this state, and when the said United States ~~bureau~~ department of agriculture, through its duly authorized officers, agents or employees, shall be thus engaged, each of such officers, agents or employees shall possess the full power and authority of a state veterinarian under and by virtue of this chapter, and the rules and regulations of the state division, but shall not be entitled to claim reimbursement from the state for services he may perform unless a mutual agreement exists for cooperative employment and joint payment.

SECTION 6. That Section 25-210, Idaho Code, be, and the same is hereby amended to read as follows:

25-210. POWERS OF VETERINARIANS AND INSPECTORS. In order to prevent the introduction or dissemination of disease among the animals of this state, the division shall be authorized and directed to quarantine any portion of this state and it shall be unlawful to move animals from or into such quarantined area except in accordance with the rules and regulations of the division; and state veterinarians, livestock inspectors and the inspectors or agents of the United States department of agriculture/animal and plant health inspection service/veterinary services under the joint supervision of the state division and chief of the United States department of agriculture/animal and plant health inspection service/veterinary services shall be authorized and empowered to inspect, quarantine, treat, test, and condemn, appraise, slaughter and dispose of any animals affected or infected with any contagious, infectious or communicable disease, or infected with the disease of epithelioma of the eye, commonly known as "cancer eye," or that have been exposed to any such disease, and quarantine, clean and disinfect all premises where such animals have been kept, and for this purpose the said inspectors, or agents, state and federal, are hereby authorized and empowered to enter any field, feed yard, barn, stable, railroad car, stock yards, truck, airplane, or other premises in this state where animals are kept. Said inspectors or agents, state and federal, shall be empowered to call on sheriffs, constables and peace officers to assist them in

the discharge of their duties and in carrying out the provisions of this chapter and of said Acts of Congress approved May 29, 1884, and the Act of March 3, 1905. Such sheriffs, constables, and other peace officers shall give such assistance as may be requested by said inspectors in carrying out the provisions of this chapter and said Acts of Congress. The word animal or animals used in this section shall ~~be--construed--to~~ include ~~poultry;--game--birds;--native--and nonnative-ungulates~~ any vertebrate member of the animal kingdom, except man; and the word disease shall ~~be-construed-to~~ include diseases of ~~poultry;-game-birds;-native--and--nonnative--ungulates~~ these animals. Any deer, elk, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture.

SECTION 7. That Section 25-211, Idaho Code, be, and the same is hereby amended to read as follows:

25-211. REPORTABLE DISEASES. It is hereby made the duty of all persons practicing veterinary medicine in this state, all owners or operators of any laboratory making tests for the following named diseases, or owners or persons in charge of livestock or other animals, to report to the ~~bureau~~ division all cases of glanders, farcy, hog cholera, tuberculosis, anthrax, rabies, dourine, scabies, pseudorabies, trichomoniasis, or ~~Bangs-disease~~ brucellosis that they may find existing among animals, within this state, within forty-eight (48) hours from the date that any such case shall come to their knowledge, providing, that any such report of any of the foregoing diseases made by any practicing veterinarian, or owner or operator of any laboratory shall be made upon forms prescribed and approved by the division of animal industries of the department of agriculture of the state of Idaho, and providing that no such practicing veterinarian or owner or operator of any laboratory in this state shall make any blood tests or other official tests upon any of such animals unless they are marked with an ~~identifying~~ official ear tag, other approved identification device or tattoo mark, and the number of such tag, device or mark with the name and address of the owner or owners of such animals shall be included in such report.

SECTION 8. That Section 25-212, Idaho Code, be, and the same is hereby amended to read as follows:

25-212. REPORTABLE EMERGENCY DISEASES -- DUTY OF OWNERS OF LIVESTOCK ~~OWNERS~~ AND OTHER ANIMALS. It is hereby made the duty of all persons practicing veterinary medicine in this state to report to the division immediately, by telephone or telegraph, any and all cases of foot and mouth disease or such other disease or diseases as may be declared to constitute an emergency by state or national authorities that they may find existing among animals of the state. Every owner of livestock or other animals and every breeder or dealer in livestock or other animals and everyone bringing livestock or other animals into

this state shall on observing the appearance of, or symptoms of any disease or diseases as herein set forth among the livestock or other animals owned by him or under his care, give immediate notice by telephone or telegraph to the division of the facts discovered by him as aforesaid, and any owner of livestock or other animals who shall fail to make report as herein provided shall forfeit all claims for indemnity for animals slaughtered on account of any disease or diseases as herein provided for in accordance with the provisions made and promulgated by the division. In the event of an outbreak of any disease or diseases as herein provided among any of the animals of this state the state board of examiners is authorized and empowered in case of extreme emergency and upon the recommendation of the division, to reimburse the owner by cash payment or to issue or cause to be issued certificates of indebtedness having interest at such rate as shall be set by the said state board of examiners, for the purpose of reimbursing the owner of any affected or exposed animal or animals which have been appraised and slaughtered by direction of the division, and for property destroyed and for labor employed in digging trenches and for disinfecting premises where such infected or exposed animal or animals have been kept: provided, that in no case shall the state pay over fifty percent (50%) of the appraised value of such animals or property, or for such labor and disinfecting material, and on condition that the United States department of agriculture pay at least fifty percent (50%) of such expense.

SECTION 9. That Section 25-213, Idaho Code, be, and the same is hereby amended to read as follows:

25-213. SALE OF ANIMALS AFFECTED WITH COMMUNICABLE DISEASES. It shall be unlawful for any person, firm or corporation, agent, or employee thereof, knowingly to sell, offer to sell, or in any manner to part with to another, any animal affected or infected with any contagious or communicable disease, or with the disease of epithelioma of the eye, commonly known as "cancer eye," except for immediate slaughter, and in accordance with the meat inspection regulations of the United States department of agriculture, or dispose of the meat, or milk or other products of any animal that may be affected or infected with such contagious, infectious or communicable disease or with the disease of epithelioma of the eye, commonly known as "cancer eye," for use as food or for other purposes, except in such manner as shall be provided by the rules and regulations of the division, or to dispose of to another in any manner an animal or animals that may be in quarantine without notifying the purchaser of the existence of such quarantine, or until such time as the quarantine shall have been raised by the proper officer.

SECTION 10. That Section 25-214A, Idaho Code, be, and the same is hereby amended to read as follows:

25-214A. STOPPING AND INSPECTION. All motor vehicles and trailers transporting livestock into the state of Idaho are hereby required to stop at Idaho ports of entry or checking stations established by the Idaho transportation department, and which are located on the highway

upon which the livestock are being transported, and submit to inspection for compliance with the livestock entry requirements of the state of Idaho. For the purposes of this chapter, the term livestock shall include bovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, ratitidae, gallinaceous birds and captive waterfowl.

SECTION 11. That Section 25-215, Idaho Code, be, and the same is hereby amended to read as follows:

25-215. TUBERCULAR ANIMALS. The division or the inspectors of the United States ~~bureau of animal industry~~ department of agriculture, animal and plant health inspection service, veterinary services shall be authorized and empowered to test (in the manner prescribed) with tuberculin or any other approved tuberculosis test any ~~bovine~~ animal kept, transported into or within this state or herded within this state, subject to the rules and regulations of the division, and when such ~~bovine~~ animal is found by the officer making the test, to give what the division shall have prescribed by its rules and regulations to be a clearly defined reaction to such tests, the said animal shall be considered to be affected with ~~bovine~~ tuberculosis. The reacting animal shall be slaughtered or destroyed and the owner indemnified in accordance with cooperative agreement between the division and the ~~United States bureau of animal industry~~ veterinary services, and in accordance with the rules and regulations of the division, and the meat inspection regulations of the United States department of agriculture.

SECTION 12. That Section 25-216, Idaho Code, be, and the same is hereby amended to read as follows:

25-216. APPRAISAL AND COMPENSATION. If in the opinion of the state department of agriculture or other qualified veterinarian working under its direction or under the direction of the secretary of agriculture of the United States, it shall be deemed necessary to destroy ~~cattle~~ animals affected with tuberculosis, the procedure shall be as follows: each animal shall be appraised according to the plan outlined by the United States department of agriculture (B.A.I. Order 260 or any future amendments or modifications thereof) except that the appraisal value as determined by the representatives of the respective departments shall be final, and compensation shall be made out of any money in the treasury of the state of Idaho, appropriated for that purpose, on the certificate of the state department of agriculture or duly appointed deputy or assistant, filed with the state board of examiners: provided, however, that in no case shall compensation from the state of Idaho exceed twenty-five dollars ($25.00) for any grade animal and fifty dollars ($50.00) for any purebred animal; and, provided further, that the salvage of the animal shall first be deducted from the appraised value of the animal, and the state of Idaho shall pay up to one-third (1/3) of the difference between the salvage and the appraised value, thereby ~~equaling~~ adding to the sum provided by the United States department of agriculture, and leaving ~~an equal~~ the remaining sum to be borne by the owner thereof; and, provided further,

that no compensation shall be made for or on account of any animal destroyed, if at the time of inspection or test of such animal or at the time of destruction thereof, it shall belong to or be on the premises of any person, firm or corporation, to which it has been sold, shipped or delivered for the purpose of being slaughtered, or is being kept in violation of any law of the United States or of the state of Idaho, or any rule or regulation of the ~~bureau of animal industry of the~~ United States department of agriculture or the state department of agriculture.

SECTION 13. That Section 25-217, Idaho Code, be, and the same is hereby amended to read as follows:

25-217. TUBERCULOSIS ERADICATION -- COOPERATION WITH FEDERAL DEPARTMENT. The state of Idaho, through its department of agriculture, is authorized to cooperate with the United States department of agriculture in the tuberculosis eradication from all animals, except sheep, on cooperative agreement, as given in B.A.I. Order No. 263, promulgated from the provisions of the Act of Congress approved October 1, 1918, and effective October 15, 1918, entitled, "An act making appropriations for the department of agriculture for the fiscal year ending June 30, 1919"; and the department of agriculture of the state of Idaho and all representatives thereof are required to work in cooperation with ~~the bureau of animal industry of the department of agriculture of~~ the United States department of agriculture, animal and plant health inspection service, veterinary services.

SECTION 14. That Section 25-218, Idaho Code, be, and the same is hereby amended to read as follows:

25-218. DISEASED ANIMALS -- TEMPORARY QUARANTINE -- NOTICE. The representatives of the department of agriculture or division of animal industries of the state of Idaho, or any inspector or agent of ~~the bureau of animal industry of~~ the United States department of agriculture, animal and plant health inspection service, veterinary services shall have authority to quarantine temporarily, where found or in any convenient place nearby, any animals affected or infected with, or exposed to, the contagion or infection of any contagious, infectious or communicable disease. The establishment of any such temporary quarantine except the quarantine of domestic sheep, shall be immediately reported to the state division of animal industries; the temporary quarantine of domestic sheep shall be reported to the board of sheep commissioners; and the state department of agriculture and state division of animal industries are hereby authorized and empowered to prescribe and enforce such rules and regulations as may be deemed necessary for the movement within the state, and the handling, method of treatment and disposition of such animals except domestic sheep, so temporarily quarantined. Such rules and regulations so made shall have the same effect as if contained in this act. Written notice of such quarantine shall be given to the owner or custodian of the quarantined animals, and it shall be unlawful to move, treat, test, dip or dispose of such animals except in accordance with said rules and regulations of said department and division.

SECTION 15. That Section 25-221, Idaho Code, be, and the same is hereby amended to read as follows:

25-221. IMPORTATION OF LIVESTOCK AND OTHER ANIMALS. It shall be unlawful for any person, firm or corporation or its agents or employees to bring or cause to be brought in any manner whatsoever into this state livestock or other animals unless they are accompanied by a ~~health~~ certificate of veterinary inspection, other approved certificate or permit, or certificate and permit showing the livestock or other animals to be free from contagious, infectious or communicable diseases or exposure thereto, the certificate or permit to be rendered in such form and manner as may be provided in the rules and regulations of the division. It shall further be unlawful to alter, change or modify an issued ~~official health~~ certificate or permit. ~~For the purposes of this chapter, the term "livestock" is defined as cattle, swine, horses, mules, asses, native or nonnative ungulates.~~

SECTION 16. That Section 25-221A, Idaho Code, be, and the same is hereby amended to read as follows:

25-221A. DIVERSION OF LIVESTOCK AND OTHER ANIMALS. It shall be unlawful to divert livestock or other animals from destinations consigned on a ~~health~~ certificate of veterinary inspection, other approved certificate or permit without notifying the ~~bureau of animal health of the department of agriculture~~ division within seventy-two (72) hours following the diversion. When livestock or other animals are found not to be in compliance with the provisions of this chapter, the department of agriculture may order such livestock or other animals to be slaughtered, removed from the state, ~~or~~ placed in an Idaho ~~registered~~ quarantined or approved feedlot or other approved facility.

SECTION 17. That Section 25-222, Idaho Code, be, and the same is hereby amended to read as follows:

25-222. CONSENT OF DIVISION REQUIRED FOR INDIVIDUAL TESTS -- INDEMNITY TO OWNERS FOR DESTROYED ANIMALS. It shall be unlawful for any person, except the representatives of the division, or the inspectors of the United States ~~bureau of animal industry~~ department of agriculture, to inject any tuberculin into any ~~bovine~~ animal of the families bovidae, cervidae, antilocapridae, or camelidae or to conduct any other approved tuberculosis test on such animals in this state without first having ~~applied to and received written or telegraphic permission to do so from the division,~~ been approved by the division to conduct such tests. All such tests shall be conducted in accordance with the rules and regulations of the division. The division shall be authorized and empowered to make and promulgate rules and regulations for the appraising and slaughtering or destroying of animals which are deemed to be affected with tuberculosis as determined through a tuberculin or other approved tuberculosis test, and to indemnify the owners~~, but not to exceed thirty-three and one-third percent (33 1/3%) of the appraised value, less the salvage,~~ when it becomes necessary to destroy such animals in order to control or eradicate tuberculosis and to protect the public health. The indemnity is to be made ~~jointly with~~

~~the United States bureau of animal industry under the Act of Congress approved October 15, 1918, and in accordance with provisions of the bureau of animal industry order No. 260 or any future amendments or modifications thereof~~ in accordance with the provisions of section 25-216, Idaho Code.

SECTION 18. That Section 25-233, Idaho Code, be, and the same is hereby amended to read as follows:

25-233. LIVESTOCK DISEASE CONTROL AND T.B. INDEMNITY FUND. All moneys derived from this act shall be deposited with the state treasurer to the credit of the livestock disease control and T.B. indemnity fund, and shall be used for the purpose of payment of deputy veterinarians' salaries, travel expense and cooperating with the ~~U.S. bureau of animal industry~~ United States department of agriculture, animal and plant health inspection service, veterinary services in maintaining laboratories, laboratory expense, equipment and supplies and for payment of indemnities for tubercular ~~cattle~~ animals slaughtered, ~~not to exceed twelve dollars and fifty cents ($12.50) for grade cattle or twenty five dollars ($25.00) for registered purebred,~~ and for other purposes deemed advisable by the administrator of the division of animal industries providing that such expenditures shall further the betterment of the livestock industry in the state of Idaho.

SECTION 19. That Section 25-236, Idaho Code, be, and the same is hereby amended to read as follows:

25-236. SALE, TRADE, BARTER, EXCHANGE AND IMPORTATION OF ANIMALS. (a) No person shall possess, offer for sale, trade, barter, exchange or importation into the state of Idaho any fox, skunk or raccoon, except as provided in subsection (b) of this section.

(b) An animal specified in subsection (a) of this section may be offered for sale, trade, barter, exchange or importation into the state of Idaho for commercial fur farming without the requirement of a permit; but an animal specified in subsection (a) hereof may be offered for sale, trade, barter, exchange or importation into the state to a public park, zoo, museum or educational institution for educational, medical, scientific or exhibition purposes only if the organization possesses a permit from the department of agriculture. The department of agriculture may refuse to issue a permit if the department finds that the organization requesting the permit does not have physical facilities adequate to maintain the animal in health and safety and to prevent the escape of the animal from confinement.

Approved March 9, 1993.

CHAPTER 17
(H.B. No. 69)

AN ACT
RELATING TO CIRCUIT BREAKER PROPERTY TAX REDUCTION; AMENDING SECTION

63-107, IDAHO CODE, TO CORRECT A CROSS REFERENCE; AND AMENDING SECTION 63-117, IDAHO CODE, TO CLARIFY THE DEFINITION OF OWNER RELATING TO PROPERTY OWNED BY MORE THAN ONE PERSON.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-107, Idaho Code, be, and the same is hereby amended to read as follows:

63-107. EXEMPT PROPERTY NOT TO BE ASSESSED -- CLAIMS PROCEDURE FOR HARDSHIP EXEMPTIONS. Property exempted from taxation under sections 63-105A -- 63-105BB, Idaho Code, shall not be assessed, except property exempted from taxation under section 63-105BB, Idaho Code, which shall be listed and assessed as other property, and each person claiming such exemptions shall give a sworn statement containing full and complete information of his financial status to such board and shall make true answers to all questions propounded in writing, or otherwise, touching such person's right to the exemption claimed. The chairman of the board shall have authority to administer oaths to each person appearing as a claimant for exemptions under section 63-105BB, Idaho Code, and in addition to such examination each claimant shall subscribe to and swear that his answers to questions propounded on written forms to be prescribed by the state tax commission are true, and which sworn statement shall be kept and filed by the clerk of the county board of equalization. The county board of equalization shall decide and determine from each examination and from each written claim for exemptions whether or not such person is entitled to the exemption claimed or to any part thereof, and shall make a record thereof accordingly. The board may, in its discretion and for good cause shown, allow an agent or some person acting for and on behalf of the claimant to make the claim for exemption for any claimant in the manner herein provided, or where a person entitled to exemption shall be mentally incompetent or physically unable to make such sworn statement, his wife, widow, guardian or personal representative, or other person having knowledge of the facts, may make such sworn statement in his stead.

Each person claiming an exemption under the provisions of section 63-105BB, Idaho Code, whether for an ordinary exemption or for an extraordinary exemption, except persons claiming an ordinary exemption pursuant to section 63-122(56)(a), Idaho Code, shall file such claim with the board of equalization at any time between January 1 and June 20. The board of equalization must consider and act on all such claims no later than the second Monday of July. All claims for an ordinary exemption under section 63-105BB, Idaho Code, filed pursuant to section 63-122(56)(a), Idaho Code, must be filed between the fourth Monday of November and the first Monday of December. The board of equalization must consider and act on all these claims no later than the first Monday of December.

SECTION 2. That Section 63-117, Idaho Code, be, and the same is hereby amended to read as follows:

63-117. DEFINITIONS. As used in sections 63-117 through and

including 63-125, Idaho Code:

(a) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code (as defined by section 63-3004, Idaho Code), alimony, support money, income from inheritances, nontaxable strike benefits, the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans' disability pensions and compensation), nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, workmen's compensation and the gross amount of "loss of earnings" insurance. It does not include capital gains, gifts from nongovernmental sources, inheritances, or medical care as defined by section 213(d) of the Internal Revenue Code, incurred by the household. Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(b) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code, unless the person qualifies as a "nonhousehold member" pursuant to subsection (c) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(c) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal care services to the claimant, or who is receiving disability benefits pursuant to subsection (f)(iv) of this section.

(d) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(e) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multi-dwelling or multi-purpose building and part of the land upon which it is built. It does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(f) "Claimant" means a person who has filed a claim under the provisions of sections 63-117 through and including 63-125, Idaho Code. To be eligible to file a claim, a person must have been domiciled in this state during the calendar year immediately preceding the year in which the claim was filed, and must have owned a homestead, evidenced by proof of taxes levied, in this state during the calendar year immediately preceding the year in which the claim was filed, and on January 1 of the year in which the claim was filed must be:

(i) not less than sixty-five (65) years old, or

(ii) a fatherless or motherless child under the age of eighteen (18) years of age, or
(iii) a widow or widower, or
(iv) a disabled person who is recognized as disabled pursuant to 42 USC 423, 45 USC 228, 45 USC 231, or 5 USC 8337, or
(v) a disabled veteran of any war engaged in by the United States, whose disability is recognized as a service connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice connected disabilities, in accordance with laws and regulations administered by the United States veterans administration, or
(vi) a person as specified in 42 USC 1701 who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage, or otherwise, or
(vii) blind.
(g) (i) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate. "Owner" shall also include any person who as grantor created a revocable trust and named himself as beneficiary of that trust. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract.
(ii) Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of tax reduction under section 63-120, Idaho Code, and regulations promulgated pursuant to section 63-1204, Idaho Code, shall be reduced to a proportion commensurate with the proportion of ~~the~~ partial ownership ~~interest~~. "Partial ownership," for purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests.
(iii) Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate shall be the "owner."
(h) (i) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his ~~home~~ primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(1) at least six (6) months during the prior year; or
(2) the majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
(3) the majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(ii) Notwithstanding the provisions of paragraph (i) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's ~~home~~ primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(15), Idaho Code, or a ~~home~~ dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the ~~home~~ dwelling upon which the application is made lives and receives help in daily living, protection and security.

Approved March 9, 1993.

CHAPTER 18
(S.B. No. 1021)

AN ACT

RELATING TO PLANNING AND ZONING; AMENDING SECTION 67-6530, IDAHO CODE, TO PROVIDE THAT THE USE OF PROPERTY FOR THE CARE OF EIGHT OR FEWER ELDERLY PERSONS IS A RESIDENTIAL USE FOR PURPOSES OF LOCAL ZONING; AMENDING SECTION 67-6531, IDAHO CODE, TO CLASSIFY HOMES IN WHICH SUCH PERSONS RESIDE AS SINGLE FAMILY DWELLINGS; AND AMENDING SECTION 67-6532, IDAHO CODE, TO PROVIDE FOR LICENSURE OF SUCH HOMES AND TO REQUIRE TREATMENT OF SUCH HOMES UNDER ZONING LAWS AND ORDINANCES IN THE SAME MANNER AS SINGLE FAMILY DWELLINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6530, Idaho Code, be, and the same is hereby amended to read as follows:

67-6530. DECLARATION OF PURPOSE. The legislature declares that it is the policy of this state that mentally and/or physically handicapped or elderly persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer mentally and/or physically handicapped or elderly persons is a residential use of such property for the purposes of local zoning.

SECTION 2. That Section 67-6531, Idaho Code, be, and the same is hereby amended to read as follows:

67-6531. SINGLE FAMILY DWELLING. (a) For the purpose of any zoning law, ordinance or code, the classification "single family dwell-

ing" shall include any home in which eight (8) or fewer unrelated mentally and/or physically handicapped or elderly persons reside; and which is supervised.

(b) Resident staff, if employed, need not be related to each other or to any of the mentally and/or physically handicapped or elderly persons residing in the home.

(c) No more than two (2) of such staff shall reside in the dwelling at any one time.

SECTION 3. That Section 67-6532, Idaho Code, be, and the same is hereby amended to read as follows:

67-6532. LICENSURE, STANDARDS AND RESTRICTIONS. (a) The department of health and welfare may require such residences to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential care home regulations, or under the intermediate care facilities for mentally retarded or related conditions regulations, or under regulations specifically written for such residences.

(b) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not required of a single family dwelling in the same zone.

(c) No local ordinances or local restrictions shall be applied to or required for a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not applied to or required for a single family dwelling in the same zone.

Approved March 9, 1993.

CHAPTER 19
(S.B. No. 1022)

AN ACT

RELATING TO VICTIMS OF SEXUAL OFFENSES; AMENDING SECTION 39-604, IDAHO CODE, TO PROVIDE FOR TESTING OF VICTIMS OF SEXUAL OFFENSES FOR HIV ANTIBODIES OR ANTIGENS UPON REQUEST, TO PROVIDE COUNSELING REGARDING HIV TO VICTIMS OF SEXUAL OFFENSES WHO TEST POSITIVE FOR HIV ANTIBODIES OR ANTIGENS, AND TO PROVIDE HEALTH CARE REFERRAL SERVICES TO VICTIMS OF SEXUAL OFFENSES WHO TEST POSITIVE FOR HIV ANTIBODIES OR ANTIGENS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-604, Idaho Code, be, and the same is hereby amended to read as follows:

39-604. CONFINED AND IMPRISONED PERSONS -- EXAMINATION, TREATMENT, AND QUARANTINE -- VICTIMS OF SEXUAL OFFENSES -- ACCESS TO

OFFENDERS' TEST RESULTS, TESTING FOR HIV, COUNSELING AND REFERRAL SERVICES. (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

(2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities and the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.

(3) All persons who shall be confined in any county or city jail and who are charged with sex offenses, drug related charges, prostitution or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code.

(4) If a person is charged with a violation of the provisions of section 18-1506, 18-1508, 18-6101 or 18-6108, Idaho Code, and is tested as required in subsection (3) of this section, the results of the test shall be revealed to the court upon its request. Upon application to the court by the victim(s), or if the victim(s) is a minor, by the minor's parent, guardian, or legal custodian, the court may release the results of the test if the court determines the health or safety of the victim(s) may be threatened. The court may impose such conditions on the release of the test results as the court deems necessary and just. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.

(5) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:

(a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of

correction, the board of correction shall reimburse such costs;
(b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;
(c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.

Approved March 9, 1993.

CHAPTER 20
(H.B. No. 45)

AN ACT
RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1367A, IDAHO CODE, TO PROVIDE ADDITIONAL METHODS FOR DETERMINING MONETARY ELIGIBILITY FOR EXTENDED UNEMPLOYMENT INSURANCE BENEFITS; AND REPEALING SECTION 72-1367B, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1367A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367A. EXTENDED UNEMPLOYMENT COMPENSATION BENEFITS. The state of Idaho hereby adopts an extended unemployment compensation benefits program to be governed by and interpreted by the provisions of this section.
(a) Definitions. As used in this section, unless the context clearly requires otherwise:
(1) "Extended benefit period" means a period which
(A) Begins with the third week after a week for which there is a state "on" indicator; and
(B) Ends with either of the following weeks, whichever occurs later:
1. The third week after the first week for which there is a state "off" indicator; or
2. The thirteenth consecutive week of such period;
provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.
(2) For weeks beginning after September 26, 1982, there is a "state 'on' indicator" for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted, under this act:
(A) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13)

week period ending in each of the preceding two (2) calendar years; and

(B) Equaled or exceeded five percent (5%); and

(C) Provided that with respect to benefits for weeks of unemployment beginning after September 26, 1982, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if it did not contain paragraph (A), and the figure "5" contained in paragraph (B) were "6" except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

(3) There is a "state 'off' indicator" for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted, under this act:

(A) Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or

(B) Was less than five percent (5%).

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this section, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by

(B) The average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(5) "Regular benefits" mean benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(6) "Extended benefits" mean benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular benefits that were available to him under this act or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(B) His benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(C) Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, the automotive products trade act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee. Provided, however, that this provision shall not be applicable to individuals seeking benefits under the unemployment compensation laws of the Virgin Islands on the day after the day on which the secretary of labor approves an unemployment compensation law submitted to him by the Virgin Islands for approval under the provisions of section 3304(a) of the Internal Revenue Code of 1954.

(9) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(10) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable state law.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the director, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits. An individual

shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the director finds that with respect to such week:

(1) He is an "exhaustee" as defined in subsection (a)(8);

(2) He has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(3) He has had twenty (20) weeks of full-time employment for covered employers during his base period, or earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages, or has earned wages for services performed for covered employers during his base period equal to at least forty (40) times his most recent weekly benefit amount.

(4) (A) Notwithstanding the provisions of this section, payment of extended compensation under this act shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (a)(10), or fails to apply for any suitable work to which he was referred; or

2. During which he fails to actively engage in seeking work.

(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsection (c)(4)(A) 1 or (c)(4)(A) 2 hereof, the individual shall be ineligible to receive extended compensation for any week which begins during a period which:

1. Begins with the week following the week in which such failure occurs; and

2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount.

(C) Extended compensation shall not be denied under subsection (c)(4)(A) 1 to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:

1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:

a. The individual's average weekly benefit amount, as determined for purposes of subsection (b)(1)(C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus

b. The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501 (c)(17)(D) of the Internal Revenue Code of 1954, payable to such individual for such week.

2. If the position was not offered to such individual

in writing or was not listed with the state employment service;

3. If such failure would not result in a denial of compensation under the provisions of the applicable state law to the extent that such provisions are not inconsistent with the provisions of subsections (a)(10) and (c)(4)(D) of this section; or

4. If the position pays wages less than the higher of:

a. The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or

b. Any applicable state or local minimum wage.

(D) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

2. The individual provides tangible evidence to the state agency that he has engaged in such an effort during such week.

(E) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1, 2, 3, and 4 of subsection (c)(4)(C) would not apply.

(d) (1) Except as provided in paragraph (2) below, payment of extended compensation shall not be made to any individual for any week if:

(A) Extended compensation would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(B) An extended benefit period is not in effect for such week in such state.

(2) Paragraph (1) shall not apply with respect to the first two (2) weeks for which extended compensation is payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

(3) Section 3304 (a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection.

(e) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(f) Total extended benefit amount. The total extended benefit amount payable to an eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) Thirteen (13) times his weekly benefit amount which was pay-

able to him under this act for a week of total unemployment in the applicable benefit year;

(3) Provided that the amount so determined shall be reduced by the total amount of extended benefits paid, or being paid, to the individual under the provisions of this section as such law existed prior to the effective date of this act, for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(4) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(g) (1) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make an appropriate public announcement;

(2) Computations required by the provisions of subsection (a)(4) shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(h) Irrespective of any of the other provisions of this act, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

(i) Whenever a program of unemployment compensation becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (a)(1) of this section in order to provide payment of such federal benefits to individuals who have exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor shall, by executive order, trigger extended benefits on if the criteria of subsection (a)(2) of this section are otherwise met.

SECTION 2. That Section 72-1367B, Idaho Code, be, and the same is hereby repealed.

Approved March 10, 1993.

CHAPTER 21
(H.B. No. 40)

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING SECTION 67-5313, IDAHO CODE, TO CLARIFY THAT THE VETERANS' PREFERENCE IN CHAPTER 5, TITLE 65, IDAHO CODE, SHALL BE OBSERVED EXCEPT THAT THE ENTRANCE PROBATIONARY PERIOD SHALL BE GOVERNED EXCLUSIVELY BY CHAPTER 53, TITLE 67, IDAHO CODE, THE STATE'S MERIT SYSTEM LAW.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5313, Idaho Code, be, and the same is hereby amended to read as follows:

67-5313. VETERANS' PREFERENCE. Veterans' preference as provided in title 65, chapter 5, Idaho Code, shall be observed except that entrance probationary periods are governed exclusively by the provisions of this chapter.

Approved March 10, 1993.

CHAPTER 22
(H.B. No. 27)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1211, IDAHO CODE, TO INCLUDE THE ENTIRE SURPLUS LINE LAW, AMENDING SECTION 41-1214, IDAHO CODE, TO CLARIFY SURPLUS LINE ASSOCIATION MEMBERSHIP REQUIREMENTS AND TO CLARIFY THE CONDITIONS FOR SALE OF INSURANCE BY SURPLUS LINE INSURERS; AMENDING SECTION 41-1215, IDAHO CODE, TO CLARIFY WHEN A BROKER'S AFFIDAVIT MUST BE FILED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1218, IDAHO CODE, TO PERMIT THE ASSESSMENT OF AN ADMINISTRATIVE PENALTY AGAINST PERSONS OR ENTITIES VIOLATING THE PROVISIONS OF CHAPTER 12, TITLE 41, IDAHO CODE, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1220, IDAHO CODE, TO CORRECT A TYPOGRAPHICAL ERROR AND TO REQUIRE DISCLOSURE REGARDING THE ABSENCE OF GUARANTY ASSOCIATION COVERAGE; AMENDING SECTION 41-1232, IDAHO CODE, TO CLARIFY SURPLUS LINE ASSOCIATION MEMBERSHIP REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-1233, IDAHO CODE, TO REVISE REPORTING PROCEDURES AND TO CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1211, Idaho Code, be, and the same is hereby amended to read as follows:

41-1211. SURPLUS LINE LAW -- SHORT TITLE -- PURPOSE. (1) Sections 41-1211 through 41-12324, Idaho Code, constitute and may be cited as

the "Surplus Line Law."

(2) It is declared that the purposes of the Surplus Line Law are to provide orderly access for the insuring public of Idaho to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus line brokers resident in Idaho and under such safeguards for the insured as may be practical, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, which under the laws of Idaho must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this law.

SECTION 2. That Section 41-1214, Idaho Code, be, and the same is hereby amended to read as follows:

41-1214. CONDITIONS FOR EXPORT. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker who is a member of a surplus line association approved by the director.

(2) The full amount or kind of insurance required must not be procurable~~,-after~~ from insurers who are authorized to do business in this state. The amount of insurance exported shall be only the excess over the amount procurable from authorized insurers unless the excess is not available without support of other coverages, provided that a diligent ~~effort-has-been~~ search is made ~~to-do-so,-from~~ among ~~a-majority-of~~ the insurers authorized to transact and actually writing that particular kind and class of insurance in this state~~,-and-the-amount-of-insurance-exported-shall-be-only-the-excess-over-the-amount-procurable-from-authorized-insurers.~~

(3) The insurance must not be so exported for the purpose of securing advantages either as to:

(a) A lower premium rate than would be accepted by an authorized insurer; or

(b) Terms of the insurance contract.

SECTION 3. That Section 41-1215, Idaho Code, be, and the same is hereby amended to read as follows:

41-1215. BROKER'S AFFIDAVIT. At the time of procuring~~,-effecting,-and--issuing~~ any such surplus line insurance the broker shall execute an affidavit, in form as prescribed or accepted by the director, setting forth facts from which it can be determined whether such insurance was eligible for export under section 41-1214, Idaho Code. The broker shall file, or cause to be filed, this affidavit with the director within thirty (30) days after the insurance ~~was--so--procured~~ policy is received.

SECTION 4. That Section 41-1218, Idaho Code, be, and the same is hereby amended to read as follows:

41-1218. ELIGIBLE SURPLUS LINE INSURERS -- PENALTY FOR VIOLATION. (1) For any violation of section 41-1217, Idaho Code, the broker shall, upon conviction thereof, be guilty of a misdemeanor punishable as provided in section 41-117, Idaho Code, (general penalty). If the director finds, after hearing, that the broker has violated such section he shall revoke all licenses held by him under this code, and shall not again license such individual under this code within a period of two (2) years after such revocation became final.

(2) The director may impose an administrative penalty not to exceed fifteen thousand dollars ($15,000), for deposit in the general account of the state of Idaho, upon any person or entity who transacts or who attempts to transact insurance as a surplus lines insurer in violation of any provision of chapter 12, title 41, Idaho Code. Failure of any such person or entity to pay a fine imposed pursuant to the provisions of this section shall authorize the director to seek enforcement of the fine, and any associated costs and attorney fees related to bringing the action, in any district court of this state.

SECTION 5. That Section 41-1220, Idaho Code, be, and the same is hereby amended to read as follows:

41-1220. ~~I~~ENDORSEMENT OF CONTRACT. Every insurance contract procured and delivered as a surplus lines coverage pursuant to this law shall have stamped upon it, in red ink with at least ten (10) point bold print, and bear the name of the surplus lines broker who procured it, the following:

"This surplus line contract is issued pursuant to the Idaho insurance laws by an insurer ~~neither~~ not licensed by ~~nor under the jurisdiction of~~ the Idaho ~~d~~Department of ~~i~~Insurance. There is no coverage provided for surplus line insurance by either the Idaho Insurance Guaranty Association or by the Idaho Life and Health Insurance Guaranty Association."

SECTION 6. That Section 41-1232, Idaho Code, be, and the same is hereby amended to read as follows:

41-1232. RULES AND REGULATIONS. (1) The director shall make or may approve and adopt reasonable rules and regulations, consistent with this surplus lines law, for any or all of the following purposes:

(a) Effectuation of such law;

(b) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for export; and

(c) Establishment, procedures, and operations of any ~~voluntary~~ organization of brokers or others designed to assist such brokers to comply with such law. The director may delegate to such an organization the responsibility, under his general supervision, for the determination of the eligibility for export of particular proposed coverages; and

(d) Regulation of the fees and charges to be required of the insured in addition to the premium as fixed by the insurer.

(2) Such rules and regulations shall be subject to the procedures and carry the penalty provided by section 41-211, Idaho Code,

(rules and regulations).

SECTION 7. That Section 41-1233, Idaho Code, be, and the same is hereby amended to read as follows:

41-1233. REPORT AND TAX OF INDEPENDENTLY PROCURED COVERAGES. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line broker pursuant to the surplus line law of this state or exempted from tax pursuant to section 41-1212, Idaho Code, shall within thirty (30) days after the date such insurance policy was so ~~procured~~ received by the insured, continued or renewed file a written report of the same with the director on forms designated by the director and furnished to the insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as the director reasonably requests. If the insurance covers also a subject of insurance resident, located or to be performed outside this state a proper pro rata portion of the entire premium payable for all such insurance shall be allocated to this state for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) ~~above~~ of this section.

(3) The insured with respect to the obligation, chose in action, or right represented by such insurance shall be subject to chapter 4, title 41, Idaho Code, as it pertains to premium tax. Within thirty (30) days after the insurance policy was so ~~procured~~ received by the insured, continued or renewed, and coincidentally with the filing with the director of the report provided for in subsection (1) ~~above~~ of this section, the insured shall pay the amount of the tax to the director.

(4) The tax imposed hereunder if delinquent shall bear interest at the rate of six percent (6%) per annum, compounded annually.

(5) The tax shall be collectible from the insured by civil action brought by the director, or by distraint.

(6) This section does not abrogate or modify any provision of sections 41-1201 (representing or aiding unauthorized insurer prohibited), 41-1202 (representing or aiding unauthorized insurer prohibited--penalty), or 41-1203 (suits by unauthorized insurer prohibited), Idaho Code.

(7) This section does not apply as to life or disability insurances.

Approved March 10, 1993.

CHAPTER 23
(H.B. No. 25)

AN ACT

RELATING TO DAY CARE; AMENDING SECTION 39-1107, IDAHO CODE, TO REFER TO RESCUE BREATHING RATHER THAN CARDIOPULMONARY RESUSCITATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1107, Idaho Code, be, and the same is hereby amended to read as follows:

39-1107. FEES. (1) The board shall establish by rule the maximum total fee to be assessed for a basic day care license which shall not exceed one hundred dollars ($100.00). The board shall allocate the fee for fire and health inspections and for the criminal history check. The board shall also establish a renewal fee which shall not exceed sixty dollars ($60.00).

(2) The applicable license fee in subsection (1) of this section shall be reduced by twenty-five percent (25%) for any day care facility which provides evidence that at least fifty percent (50%) of its staff is certified in infant/child first aid and ~~cardiopulmonary resuscitation~~ pediatric rescue breathing.

Approved March 10, 1993.

CHAPTER 24
(H.B. No. 5)

AN ACT

RELATING TO BOARDS OF COMMUNITY GUARDIAN; AMENDING SECTION 15-5-602, IDAHO CODE, AS AMENDED BY CHAPTER 213, LAWS OF 1990, TO PROVIDE THAT WHEN NO OTHER QUALIFIED PERSON VOLUNTEERS, THE BOARD MAY LOCATE A QUALIFIED PERSON TO SERVE AS GUARDIAN AND/OR CONSERVATOR OR PETITION THE COURT FOR APPOINTMENT AS GUARDIAN AND/OR CONSERVATOR, AND TO PROVIDE FOR A LIEN ON THE REAL PROPERTY OF THE PERSON FOR WHOM THE BOARD SERVES AS GUARDIAN AND/OR CONSERVATOR FOR FEES INCURRED BY THE BOARD AND NOT PAID PRIOR TO TERMINATION OF THE BOARD'S SERVICES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-5-602, Idaho Code, as amended by Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

15-5-602. BOARD STRUCTURE -- POWERS AND DUTIES. (a) Any board of community guardian which is created within a county or counties in a judicial district shall operate under the laws of the state of Idaho, including the Idaho guardianship, conservatorship and trust laws.

(b) A board of community guardian shall consist of not fewer than seven (7) or more than eleven (11) members who are representatives of community interests involving persons needing guardians or conservators as defined by chapter 5, title 15, Idaho Code.

(1) The terms of the members of the board shall be for two (2) years and shall be staggered. A number of members equaling or most closely exceeding one-half (1/2) shall initially be appointed for one (1) year. Any vacancy created by resignation or expiration of term shall be filled in the same manner as the original appointment;

(2) No person shall be appointed for more than four (4) successive terms or eight (8) successive years on the board;

(3) The board shall meet not less than once each quarter;

(4) No person shall be a member of a board who is also an employee of the district court or the clerk of the district court;

(5) A board member having previously provided or currently providing services to a ward shall disclose such to the board and abstain from any decision or action taken concerning that particular ward;

(6) Board members and officers shall serve without pay;

(7) Each board shall elect its own chairman and other officers.

(c) A board, in those instances when a guardian and/or conservator is required and no qualified family member or other qualified person has volunteered to serve, ~~shall solicit, locate, and obtain individuals or corporations~~ may:

(1) Locate a qualified person to serve as ~~private or corporate~~ guardians and/or ~~individuals for whom guardians are required to be appointed under the guardianship and conservatorship laws of the state of Idaho.~~ conservator; or

(~~1~~2) ~~When neither the board nor the district court can find a person or corporation to act as guardian, the board shall~~ pPetition the court to be appointed guardian~~, and the court may appoint the board upon being satisfied that no qualified person or corporation is available to act~~ and/or conservator.

~~(2) The board may serve as guardian of the person or conservator of the property of an incapacitated person; however, the board shall serve only as the guardian of last resort and only until a qualified guardian can be found to substitute for the board, at which time a joint petition for substitution shall be filed in the guardianship proceedings.~~

(d) The board shall have all the powers and duties where applicable by court order, as provided under section 15-5-312 of this code and/or sections 15-5-408 and 15-5-424 of this code and in addition thereto shall:

(1) Locate and recommend to the court, where necessary, that a visitor be appointed as provided in section 15-5-503 of this code;

(2) Have access to all confidential records, including abuse registry reports that may be maintained by state or private agencies or institutions, which records concern a person for whom the board acts as guardian and/or conservator. The name of the person reporting the alleged abuse shall be subject to disclosure according to chapter 3, title 9, Idaho Code;

(3) Review and monitor the services provided by public and pri-

vate agencies to any incapacitated person for whom the board acts as guardian and/or conservator and determine the continued need for those services;

(4) Assess a fee for services developed pursuant to this part;

(5) Have the power, subject to the approval of the board of county commissioners, to adopt such rules as are necessary to carry out the duties and responsibilities of the board.

(e) When a board serves as guardian or conservator, it shall be compensated as other guardians or conservators pursuant to Idaho law. If, at the time the board is appointed as guardian and/or conservator, the incapacitated person for whom the board is to act has no funds, the court may waive the payment of fees.

(f) When a board serves as guardian and/or conservator t~~T~~here is created, at the time of filing of the order of appointment, a lien in favor of the board against any real property owned by the ward or protected person, enforceable only upon the termination of ~~a~~ the guardianship and/or conservatorship, for all fees which were incurred throughout the duration of the services and which were not paid prior to termination. All fees incurred throughout the duration of the services and which were not paid prior to the termination of services shall relate back to the effective date of the lien. The board must record a notice of said lien within thirty (30) days of filing of the order of appointment. Such liens shall be recorded in every county where property subject to the lien is located. The notice shall contain at least the following information: full court heading of the action in which the appointment was made; the effective date of the lien; the name and address of the board; and any limitations or terms regarding the fees covered by the lien contained in the order of appointment. The court may postpone or arrange for gradual repayment of the fees if the court finds that the immediate repayment would create a hardship on the person.

(g) No member of a board of community guardian, any employees, or any visitor appointed at the request of such board pursuant to section 15-5-303 of this code, shall be liable for civil damages by reason of authorizing medical treatment or surgery for the person for whom the board is appointed, if the board member, employee or visitor, after medical consultation with the person's physician, acts in good faith, is not negligent, and acts within the limits established for the guardian and/or conservator by the court. No such person shall be liable, by reason of his authorization, for injury to the person for whom the guardian~~ship~~ and/or conservator has been appointed which injury results from the negligence or other acts of a third person, if the court has authorized the giving of medical consent by the board or the individual members of the board. No such person shall be liable in the performance of acts done in good faith within the scope of his authority as long as the act is not of a wanton or grossly negligent nature. The board of community guardian shall be deemed to be a governmental entity for the purposes of application of the Idaho tort claims act.

Approved March 10, 1993.

CHAPTER 25
(S.B. No. 1129)

AN ACT

RELATING TO COUNTY BUDGETS; AMENDING SECTION 31-1604, IDAHO CODE, TO CHANGE THE PUBLICATION DEADLINE FROM THE THIRD MONDAY TO THE THIRD WEEK IN AUGUST, AND TO REVISE PUBLICATION REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-1604, Idaho Code, be, and the same is hereby amended to read as follows:

31-1604. APPROVAL OF TENTATIVE APPROPRIATIONS -- NOTICE -- FINAL APPROPRIATIONS. Said proposed budget prepared by the county budget officer as hereinabove provided, together with the estimates and information furnished by the various offices, departments, services, agencies and institutions of the county shall be submitted by said county budget officer to the board of county commissioners of his county on or before the first Monday in August of each year; said county commissioners shall thereupon and on said first Monday in August, convene to consider said proposed budget in detail and make any alterations allowable by law and which they deem advisable, and agree upon a tentative amount to be allowed and appropriated for the ensuing fiscal year to each office, department, service, agency or institution of the county. Such allowances or appropriations shall be made under the classifications of:

"Salaries and wages," and

"Other expenses," as hereinafter provided.

When the commissioners have agreed on such tentative appropriations the county budget officer, not later than the third ~~Monday~~ week in August, shall cause notice to be published setting forth the amount of anticipated revenue from property taxes and the total of revenues anticipated from sources other than property taxes and the amount proposed to be appropriated to each office, department, service, agency or institution for the ensuing fiscal year, in two (2) classifications of "Salaries and wages," and "Other expenses," together with the amounts expended under these classifications during each of the two (2) previous fiscal years by each office, department, service, agency or institution; and that the board of county commissioners will meet on the Tuesday following the first Monday in September, next succeeding, for the purpose of considering and fixing a final budget and making appropriations to each office, department, service, agency or institution of the county for the ensuing fiscal year at which time any taxpayer may appear and be heard upon any part or parts of said tentative budget and fixing the time and place of such meeting. Said notice shall be published in a newspaper ~~published in the county, or if there be none, then in a newspaper of general circulation in the county~~ as prescribed in section 31-819, Idaho Code.

Approved March 10, 1993.

CHAPTER 26
(H.B. No. 43, As Amended)

AN ACT

RELATING TO TECHNICAL CORRECTIONS TO THE SALES TAX ACT; AMENDING SECTION 63-3612, IDAHO CODE, DEFINING "SALE" TO OMIT AIR AMBULANCE SERVICES FROM CERTAIN TAXABLE RECEIPTS; AMENDING SECTION 63-3616, IDAHO CODE, DEFINING TANGIBLE PERSONAL PROPERTY TO INCLUDE INFORMATION STORED IN AN ELECTRONIC MEDIUM WITHIN THE DEFINITION OF COMPUTER SOFTWARE; AMENDING SECTION 63-3622F, IDAHO CODE, TO CLARIFY THE LIMITATION UPON THE EXEMPTION FOR PROPERTY SOLD BY PUBLIC UTILITIES; AMENDING SECTION 63-3622N, IDAHO CODE, PROVIDING THE EXEMPTION FOR CERTAIN MEDICAL ITEMS TO CLARIFY THAT PROPERTY USED TO TEST OR MONITOR THE BLOOD OF A DIABETIC IS EXEMPT AND TO CORRECT TECHNICAL REFERENCES TO ORTHODONTISTS AND DENTAL OR ORTHODONTIC APPLIANCES; AMENDING SECTION 63-3622R, IDAHO CODE, TO CLARIFY THE EXEMPTION FOR THE SALE OR USE OF CERTAIN MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS GROSS MAXIMUM WEIGHT WHICH ARE NOT REGISTERED UNDER THE INTERNATIONAL REGISTRATION PLAN; AMENDING SECTION 63-3623B, IDAHO CODE, TO CONFORM TO A LATER EXEMPTION ENACTED FOR AMUSEMENT DEVICES; AMENDING SECTION 63-3633, IDAHO CODE, TO CORRECT A STATUTORY CROSS REFERENCE; AMENDING SECTION 63-3635, IDAHO CODE, TO INCORPORATE BY REFERENCE SECTION 63-3074, IDAHO CODE, RELATING TO CIVIL ACTIONS AGAINST THE STATE OF IDAHO FOR ALLEGED UNLAWFUL SEIZURE OF PROPERTY; REPEALING SECTION 63-3637, IDAHO CODE, RELATING TO CIVIL ACTIONS AGAINST THE STATE OF IDAHO FOR ALLEGED UNLAWFUL SEIZURE OF PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3612, Idaho Code, be, and the same is hereby amended to read as follows:

63-3612. SALE. The term "sale" means and includes any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and shall include any transfer of possession through incorporation or any other artifice found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, an exchange or barter. "Sale" shall also include:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(b) Furnishing, preparing, or serving for a consideration food, meals, or drinks and nondepreciable goods and services directly consumed by customers included in the charge thereof.

(c) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(d) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or

printed to the special order of the customer, or of any publication.

(e) Admission charges.

(f) Receipts from the use of or the privilege of using tangible personal property or other facilities for recreational purposes.

(g) Providing hotel, motel, tourist home or trailer court accommodations and nondepreciable goods and services directly consumed by customers included in the charge thereof, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

(h) Receipts from the lease or rental of tangible personal property.

(i) As used in subsections (b) and (g) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable property.

(~~i~~j) Receipts from intrastate transportation for hire by air of freight or passengers, except (1) as part of a regularly scheduled flight by a certified air carrier, under authority of the United States, or (2) when providing air ambulance services.

SECTION 2. That Section 63-3616, Idaho Code, be, and the same is hereby amended to read as follows:

63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(b) The term "tangible personal property" includes any computer software which is not a custom computer program.

(i) As used in this subsection, the term "computer software" means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user.

(ii) As used in this subsection, the term "custom computer program" means any computer software (as defined in this subsection) which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a "canned" or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.

SECTION 3. That Section 63-3622F, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622F. UTILITIES. There is exempted from the taxes imposed by this chapter the sale or purchase of natural gas, electricity, and water when delivered to consumers at the place of consumption by means of pipes, wires, mains or similar systems.

SECTION 4. That Section 63-3622N, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622N. PRESCRIPTIONS. (a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner licensed by the state under title 54, Idaho Code, to administer or distribute such items or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner licensed by the state under title 54, Idaho Code, to prescribe such items:

(1) Drugs, hypodermic syringes, insulin, insulin syringes, artificial eyes, hearing aids, and hearing aid parts and accessories;

(2) Drugs and supplies used in hemodialysis and peritoneal dialysis;

(3) Braces and other orthopedic appliances;

(4) Catheters, urinary accessories, colostomy supplies, and other prosthetic devices which shall include, but is not limited to, enteral and parenteral feeding equipment and supplies, (tubing, pumps, containers) catheter devices and supplies, but not including eyeglasses and contact lenses;

(5) Equipment and devices or chemical reagents which are used ~~by a diabetic~~ to test or monitor blood or urine of a diabetic;

(6) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but is not limited to: oxygen equipment, oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating,

desks, work stations, foam wedges, writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stairglides, lifts in home, transcutaneous nerve stimulators, muscle stimulators, bone fracture therapy devices.

(b) The term "practitioner" means a physician, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter.

(c) The term "drug" as defined in section 54-1705, Idaho Code, shall not include articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man.

(d) The term "durable medical equipment" means equipment which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury; and

(4) Is appropriate for use in the home.

(e) The term "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such devices, but shall not include dentures, dental bridgework and other dental or orthodontic appliances.

(f) The sale of dentures, dental bridgework, other dental or orthodontic appliances and related parts for such ~~orthodontic~~ appliances, by a practitioner to his patient is incidental to the professional services provided and is a sale of services. The practitioner is the consumer of the dentures, dental bridgework, other dental or orthodontic appliances and related parts used by him, and the sale to or use by the practitioner of such tangible personal property is taxable.

SECTION 5. That Section 63-3622R, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622R. MOTOR VEHICLES AND USED MOBILE HOMES. There are exempted from the taxes imposed by this chapter:

(a) Sales of motor vehicles ~~with--a--maximum--gross--registered weight--of--twenty-six--thousand--(26,000)-pounds-or-less-and-trailers other-than-trailers-defined-in-subsection-(c)-of-this-section~~ for use outside of this state, even though delivery be made within this state, but only when:

(1) The vehicles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) Said motor vehicles and trailers will be titled and licensed immediately under the laws of another state, will not be used in this state more than twenty-five percent (25%) of the mileage in any calendar year, and will not be required to be titled under the

laws of this state.

(b) Sale of used manufactured homes, whether or not such used manufactured homes are sold for use outside this state, and whether or not such used manufactured homes are sold by a dealer. Every manufactured home sale after its sale as a "new manufactured home," as defined in section 63-3606, Idaho Code, is a sale as a used manufactured home.

(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan or similar proportional or pro rata registration system, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under such proportional or pro rata registration system when such vehicles and trailers are substantially used in interstate commerce. If such a vehicle or trailer is not substantially used in interstate commerce during any calendar year, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any calendar year.

SECTION 6. That Section 63-3623B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3623B. AMUSEMENT DEVICES. (a) For purposes of this section the term "amusement device" shall mean all coin or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.

(b) ~~The purchase at retail of amusement devices shall be a sale subject to the taxes imposed in this chapter.~~

~~(c)~~ The charge for using an amusement device shall be subject to the taxes imposed in this chapter and the tax shall be computed by multiplying seventy per cent (70%) of the gross proceeds from each amusement device by one hundred seventeen per cent (117%) and applying the applicable tax rate established in this chapter to the product thus computed. The owner or lessee of the amusement device shall be the person responsible for filing all returns and remitting all taxes due relating to the proceeds of the amusement device.

SECTION 7. That Section 63-3633, Idaho Code, be, and the same is hereby amended to read as follows:

63-3633. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION. Except as otherwise provided in this section:

(a) The amount of taxes imposed by this act shall be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is the later, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be

collected by levy or by a proceeding in court within a period of six (6) years after assessment of the tax and, provided further, that this shall not be in derogation of any of the remedies elsewhere herein provided. The running of the period of limitations provided by this section shall be suspended for the period during which the state tax commission is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(b) In the case of a false or fraudulent return with the intent to evade tax, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In the case of taxes owed by a person who has failed to file a return as provided in section 63-362~~1~~3, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed. Provided, however, that this period of limitation upon assessment and collection shall not apply in cases where the facts disclose a false or fraudulent act with the intent to evade tax, nor shall it apply in cases where a retailer or seller has collected taxes under this chapter and has failed to pay over such taxes to the state tax commission.

(d) In the case of taxes due during the lifetime of a decedent, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within six (6) months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent.

(e) Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this act, both the state tax commission or its delegate or deputy and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SECTION 8. That Section 63-3635, Idaho Code, be, and the same is hereby amended to read as follows:

63-3635. COLLECTION AND ENFORCEMENT. The collection and enforcement procedures provided by the Idaho Income Tax Act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3047, 63-3048, 63-3050 through 63-3064, 63-3065A, ~~and~~ 63-3071 and 63-3074, Idaho Code, shall apply and be available to the tax collector for enforcement of the provisions of this act and collection of any amounts due under this act, and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as sales and use tax liens and proceedings.

SECTION 9. That Section 63-3637, Idaho Code, be, and the same is hereby repealed.

Approved March 10, 1993.

CHAPTER 27
(H.B. No. 80)

AN ACT

RELATING TO CERTAIN FEES CHARGED FOR PERMITS, LICENSES AND TAGS; AMENDING SECTION 36-407, IDAHO CODE, TO INCREASE THE FEES FOR NONRESIDENT HUNTING LICENSES, NONRESIDENT SEASON FISHING LICENSES, NONRESIDENT NONGAME LICENSES, NONRESIDENT TEN DAY FISHING LICENSE, NONRESIDENT THREE DAY FISHING LICENSE, NONRESIDENT TWO DAY HUNTING LICENSE, NONRESIDENT FALCONRY HUNTING LICENSE, DAILY FISHING LICENSE, AND NONRESIDENT THREE DAY FISHING LICENSE WITH STEELHEAD OR SALMON PERMIT; AND AMENDING SECTION 36-409, IDAHO CODE, TO INCREASE THE FEES FOR NONRESIDENT MOOSE, BIGHORN SHEEP, MOUNTAIN GOAT, ELK, DEER, ANTELOPE, MOUNTAIN LION, BEAR AND TURKEY TAGS; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT FISHING, HUNTING, AND TRAPPING LICENSES -- FEES -- RIGHTS UNDER. Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. A license of this kind may be had upon payment of ~~eighty-five~~ one hundred dollars ($~~85~~100).

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had by persons fourteen (14) years of age or older upon payment of ~~forty~~ fifty dollars ($~~40~~50.00).

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this kind may be had upon payment of one hundred and fifty dollars ($150) providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of ~~ten~~ fifteen dollars ($~~10~~15.00). This license shall be valid only during the period of January 1 to August 31 of the calendar year in

which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Ten Day Fishing License. A license entitling a person to fish in the waters of the state for a period of ten (10) consecutive days only. A license of this kind may be had upon payment of ~~seventeen~~ thirty dollars ($~~17~~30.00).

(f) Nonresident Three Day Fishing License. A license entitling a person to fish in the waters of the state for a period of three (3) consecutive days only. A license of this kind may be had upon payment of ~~ten~~ fifteen dollars ($1~~0~~5.00).

(g) Nonresident Two Day Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, and pygmy rabbits for any two (2) consecutive days. A person holding this license may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of ~~forty~~ fifty-five dollars ($4~~0~~5.00).

(h) Nonresident Falconry Hunting License. A license entitling a person possessing a valid falconry permit in a state or province other than Idaho, to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals, migratory waterfowl and to purchase any tags or stamps required, may be had upon payment of ~~seventy-five~~ one hundred dollars ($~~75~~100). The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of ten dollars ($10.00). Only trained raptors may be used under a license or special permit issued under the provisions of this subsection.

(i) Daily Fishing License -- Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of ~~five~~ six dollars ($5~~6~~.00) per day for each effective day thereof.

(j) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of ~~twenty~~ thirty dollars ($~~2~~30.00). The three (3) day license holder may fish for and take one (1) steelhead trout and one (1) anadromous salmon or either two (2) steelhead trout or two (2) anadromous salmon subject to the limitations prescribed in this title and rules and regulations promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so. Moneys collected pursuant to this subsection shall be remitted as specified by law.

SECTION 2. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- ARCHERY PERMITS -- FEES -- PENALTY. (a) Resident Game Tags. A resident who has obtained a permit to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, or turkey in accordance with the laws of this state and regulations promulgated by the commission; provided further, that the holder of a senior resident permit may be issued a bear, deer or elk tag without charge; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (r) of section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a hunting license, as provided in section 36-407(a), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear or turkey in accordance with the laws of this state and regulations promulgated by the commission.

(c) Schedule of Game Tag Fees.

Game	Resident	Nonresident
Moose	$60.00	$~~5~~900.00
Bighorn Sheep	60.00	~~5~~900.00
Mountain Goat	60.00	~~5~~900.00
Elk	15.00	~~3~~250.00
Deer	9.00	~~1~~225.00
Antelope	26.50	~~90~~225.00
Mountain Lion	25.00	~~1~~225.00
Bear	6.00	~~1~~225.00
Turkey	6.00	~~2~~35.00
Deer, Elk and Bear 'Pak'	29.00	not applicable

(d) Game Tags Required -- To Be Endorsed on License. The appropriate tag must be had for the hunting or taking of each and every one (1) of the aforementioned wildlife. Provided, however, that the requirements for a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. All of said tags are to bear and have serial numbers to be endorsed on the purchaser's license by the vendor at the time of sale.

(e) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission regulation.

(f) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any persons participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased at a fee of seven dollars and fifty cents ($7.50).

(g) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically des-

ignated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased at a fee of seven dollars and fifty cents ($7.50).

(h) Upland Game Permit. The commission may, under rules and regulations as it may prescribe, issue an upland game permit that must be purchased by all persons over sixteen (16) years of age prior to hunting upland game, provided that a permit shall not be required to hunt forest grouse (blue, ruffed or spruce), sharp-tailed grouse, sage grouse, mourning dove, turkey, cottontail rabbit, pygmy rabbit or snowshoe hare. The fee for such a permit shall be five dollars ($5.00) and the proceeds from the sale of such permits shall be utilized for the acquisition of state and federal lands or interests of less than fee simple in private lands and the development, management, improvement, sale or exchange of upland game habitat. This subsection shall be null and void and of no force and effect on and after July 1, 1995.

(i) Hound Hunter Permit. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased for a fee of ten dollars ($10.00).

SECTION 3. This act shall be in full force and effect on and after May 1, 1993.

Approved March 15, 1993.

CHAPTER 28
(S.B. No. 1003)

AN ACT

RELATING TO LEASED LAND; AMENDING SECTION 58-140, IDAHO CODE, TO INCORPORATE AN IMPROVEMENT ACCOUNT FOR CROPLANDS AND COMMERCIAL/INDUSTRIAL LANDS INTO THE EXISTING ACCOUNT FOR GRAZING AND TIMBER LANDS, AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 58-140, Idaho Code, be, and the same is hereby amended to read as follows:

58-140. SPECIAL ACCOUNT FOR THE MAINTENANCE, MANAGEMENT AND PROTECTION OF STATE OWNED TIMBER~~, GRAZING AND RECREATION SITE~~ AND LEASED LANDS. A reasonable amount not to exceed ten per centum (10%) of the moneys received from the sale of standing timber, from grazing leases ~~and from~~, cropland leases, recreation site leases, commercial leases and industrial leases shall constitute a special account, which is hereby created to be used for maintenance, management and protection of state owned timber lands, grazing lands ~~and~~, croplands, recreation site lands, commercial lands and industrial lands: provided, that any moneys constituting part of such account received from a sale of standing timber or from leases of lands which are a part of any endow-

ment land grant shall be used only for the maintenance, management and protection of lands of the same endowment grant. Provided further, that all such funds collected from timber sales shall be expended solely for the purpose of management, protection and reforestation of state lands. All such funds collected from recreation site leases, commercial leases and industrial leases shall be expended for the maintenance, protection and improvement of both new lease sites, and existing recreation, commercial and industrial areas situated on state lands. All such funds collected from grazing and cropland leases shall be expended for the maintenance, management and protection of state owned grazing and croplands. Control and eradication of noxious weeds ~~is~~ are a part of the maintenance, protection and improvement programs.

The state board of land commissioners is hereby authorized to establish rules and regulations fixing a percentage of the amount received from each sale of standing timber not to exceed ten per cent (10%) and from each grazing and, cropland, recreation, commercial and industrial site lease, not to exceed ten per centum (10%) of the total, which shall constitute the special account herein created. The account shall be deposited with the state treasurer, who shall keep a record thereof which shall show separately moneys received from each category of endowment lands. All moneys deposited in the account are hereby appropriated continually to the state board of land commissioners for the purposes hereinabove enumerated.

Additionally, the state board of land commissioners is hereby authorized to contract with the state department of agriculture, or with any county, to provide programs of noxious weed control or eradication on state lands, and may utilize such resources as are available to the board for such purposes.

Approved March 16, 1993.

CHAPTER 29
(S.B. No. 1005)

AN ACT

RELATING TO TIMBER SALES; AMENDING SECTION 58-406, IDAHO CODE, TO INCREASE THE DOLLAR LIMITATION FOR SALVAGE TIMBER SALES AND FOR DIRECT TIMBER SALES FOR PUBLICATION PURPOSES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 58-406, Idaho Code, be, and the same is hereby amended to read as follows:

58-406. SALE OF PARCELS -- ADVERTISEMENT OF SALE. Whenever the state board of land commissioners directs a sale of timber, it shall direct such sale in such parcels as it deems for the best interests of the state. All sales of timber on state lands, where sold separate from the lands, shall be advertised in one or more newspapers, to be designated by the board, one (1) of which shall be in the county where such timber is located, if there be such paper, if not, then in some

newspaper published in an adjoining county, and if such timber is located in more than one (1) county, then in some newspaper in each of the said counties, if there be such paper, if not, then in some newspaper published in an adjoining county, once a week for four (4) consecutive weeks, except that in cases of catastrophic damage caused by insect, weather, or fire, the state board of land commissioners may direct an advertisement of less than four (4) consecutive weeks. The advertisement shall set forth the time and place of the sale, a description of the land by legal subdivisions on which such timber is situated, the length of time allowed for harvesting the timber, and the minimum price below which no bid shall be accepted. Provided, however, that small sales of timber, not exceeding one million (1,000,000) board feet in volume, according to the cruiser's estimate, and ~~fifty~~ seventy-five thousand dollars ($75~~0~~,000) in appraised value, may be made as provided herein, except that only one (1) publication of advertisement shall be necessary and the date of sale shall be set not less than four (4) days after date of publication, and provided further that very small sales of timber not exceeding one hundred thousand (100,000) board feet and ~~five~~ ten thousand dollars ($5~~1~~0,000) may be made without advertisement and upon approval of the director of the department of lands.

Approved March 16, 1993.

CHAPTER 30
(S.B. No. 1011)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-103, IDAHO CODE, TO PROVIDE ADDITIONAL DUTIES OF THE DIRECTOR OF THE DEPARTMENT TO PREVENT OR CONTROL DAMAGE BY WILDLIFE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-103, Idaho Code, be, and the same is hereby amended to read as follows:

22-103. DUTIES OF DIRECTOR. The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

(1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the live-

stock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules and regulations governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products.

(12) Maintain a market news service, including information concerning crops, freight rates, commission rates and such other information as may be of service to producers and consumers, and to act as a clearinghouse for information between producers and consumers.

(13) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.

(14) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(15) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(16) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, test-

ing or treatment of such bees and animals at the expense of the owner thereof.

(17) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products.

(18) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(19) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(20) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(21) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(22) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection (22), the director shall prescribe and promulgate rules and regulations pursuant to chapter 52, title 67, Idaho Code.

(23) Prescribe by rule or regulation an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve per cent (12%) per annum.

(24) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

Approved March 16, 1993.

CHAPTER 31
(S.B. No. 1020)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE AN EXEMPTION THAT RECORDS OF A PUBLIC ENTITY PREPARED IN ANTICIPATION OF LITIGATION BE EXEMPT FROM PUBLIC DISCLOSURE, EXCEPT AS OTHERWISE DISCOVERABLE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in,

or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used

to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status,

workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(37) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(~~37~~38) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(~~38~~39) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(40) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims

evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided, however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency.

Approved March 16, 1993.

CHAPTER 32
(S.B. No. 1030)

AN ACT

RELATING TO THE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES; AMENDING SECTION 42-1805, IDAHO CODE, TO ADD TO THE DUTIES OF THE DIRECTOR AUTHORITY TO DEVELOP, COORDINATE AND PROVIDE FOR WEATHER MODIFICATION ACTIVITIES DESIGNED TO INCREASE THE WATER SUPPLIES OF THE STATE BY ENHANCING NATURAL PRECIPITATION THROUGH CLOUD SEEDING, AND TO PROVIDE FOR DATA GATHERING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation

and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

(10) To develop, coordinate and provide, through contract or by other means, for weather modification projects involving cloud seeding that are designed to increase the water supplies of the state by enhancing natural precipitation and which conform to state water planning objectives. To accomplish these purposes the director is authorized to accept and use funds acquired through legislative appropriation or by gift, grant, contribution or funding received from any private or public individual or entity. All funds accepted under this provision shall be transmitted to the state treasurer for deposit in the water administration account and shall be reserved and made available until expended as ordered by the director for weather modification purposes determined by the director to be beneficial.

(11) To develop and implement a plan for data gathering to determine any effect of the weather modification efforts in which the department is involved.

Approved March 16, 1993.

CHAPTER 33
(S.B. No. 1111)

AN ACT
RELATING TO SECURED TRANSACTIONS; AMENDING SECTION 28-9-407, IDAHO CODE, TO DELETE A SPECIFIC CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 28-9-407, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-407. INFORMATION FROM FILING OFFICER. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The secretary of state may provide by administrative rule for the certificate to include information on notices filed pursuant to ~~section 45-308,~~ other provisions of Idaho Code, as well as on either or both types of financing statements described in section 28-9-402.

(3) The secretary of state shall develop and implement a central filing system containing the information filed with his office pursuant to section 28-9-402(9). Under this system the secretary shall record the date and time of filing and compile the information into a master list organized according to farm products. The list shall be organized within each farm product category in alphabetical order according to the last name of the borrower (or, in the case of borrowers doing business other than as individuals, the first word in the name of such borrower). The list shall be further organized according to and contain information required by federal law and regulation. The secretary of state shall, by duly adopted administrative rule, designate the categories of farm products to be used in compiling the master list. The secretary of state may establish and maintain, pursuant to duly adopted administrative rule, a separate system for filing of financing statements and search, retrieval and dissemination of information relating to financing statements for farm products, and require separate search requests for such information pursuant to a fee schedule to be established in such administrative rule.

(4) The secretary of state shall maintain a list of all buyers of farm products, commission merchants, and selling agents who register with the secretary of state indicating an interest in receiving the lists described in subsection (5) of this section.

(5) The secretary of state shall distribute complete master lists for each farm product category at least quarterly to each buyer, com-

mission merchant and selling agent registered under subsection (4) of this section and distribute either complete lists or cumulative supplements, which supplements shall be issued not less frequently than semimonthly, of financing statements for farm products filed subsequent to the last date of filing for financing statements on the last preceding quarterly master list, which the buyer, commission merchant or selling agent has requested. The date of receipt for lists and supplements shall be the third calendar day following the date of mailing by the secretary of state, or in the event the mail is not delivered on that day, the first day thereafter on which mail is delivered.

(6) Upon the request of any person the secretary of state shall provide, within twenty-four (24) hours, an oral confirmation of the filing of the form described in section 28-9-402(9) followed by a written confirmation.

(7) Upon request of any person, the filing officer shall furnish copies of particular filed financing statements or statements of assignment at a uniform cost of one dollar ($1.00) per page if the requestor provides the filing officer with the file numbers of the statement to be copied.

(8) The secretary of state shall, by administrative rule, establish a fee schedule for services for which provision is made in this section and for which a fee is not specified elsewhere in this section.

Approved March 16, 1993.

CHAPTER 34
(S.B. No. 1197)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 320, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 320, Laws of 1992, there is hereby appropriated to the Office of the Governor, the following amount to be expended for the designated program according to designated expense class from the listed fund for the period July 1, 1992, through June 30, 1993:

VII. STATE EMERGENCY RESPONSE COMMISSION:

FOR:	
Trustee and Benefit Payments	$3,500
FROM:	
General Fund	$3,500

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect

on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 35
(S.B. No. 1198)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR THE PERSONNEL COMMISSION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 300, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 300, Laws of 1992, there is hereby appropriated to the Department of Administration for the Personnel Commission, the following amount, to be expended according to the designated expense class from the listed fund for the period July 1, 1992, through June 30, 1993:

FOR:	
Operating Expenditures	$230,000
FROM:	
Personnel Commission	$230,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 36
(S.B. No. 1199)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE DIVISION OF FINANCIAL MANAGEMENT IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 299, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 299, Laws of 1992, there is hereby appropriated to the Office of the Governor for the Division of Financial Management, the following amounts, to be expended according to the designated expense class from the listed fund for the period July 1, 1992, through June 30, 1993:

FOR:	
Operating Expenditures	$31,000

FROM:
Indirect Cost Recovery $31,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 37
(S.B. No. 1200)

AN ACT
APPROPRIATING MONEYS TO THE REGULATORY BOARDS IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 127, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 127, Laws of 1992, there is hereby appropriated to the following regulatory boards in the Department of Self-Governing Agencies the following amounts, to be expended from the listed fund according to the designated expense classes during the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. BOARD OF ENGINEERING EXAMINERS:			
FROM:			
State Regulatory Fund	$1,200	$10,700	$11,900
B. BUREAU OF OCCUPATIONAL LICENSES:			
FROM:			
State Regulatory Fund		$31,300	$31,300
C. BOARD OF OPTOMETRY:			
FROM:			
State Regulatory Fund		$ 700	$ 700

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 38
(S.B. No. 1201)

AN ACT
APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION

FOR THE BLIND IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 202, LAWS OF 1992, FOR FISCAL YEAR 1993; APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION FOR THE BLIND IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 202, LAWS OF 1992, THROUGH JUNE 30, 1994; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 202, Laws of 1992, there is hereby appropriated to the Office of the Governor for the Commission for the Blind, the following amounts, to be expended according to the designated expense class from the listed funds for the period July 1, 1992, through June 30, 1993:

FOR:	
Operating Expenditures	$18,300
FROM:	
General Fund	$12,300
Randolph Sheppard Fund	2,000
Miscellaneous Revenue Fund	4,000
TOTAL	$18,300

SECTION 2. In addition to the appropriation made in Section 1, Chapter 202, Laws of 1992, there is hereby appropriated to the Office of the Governor for the Commission for the Blind, the following amounts, to be expended according to the designated expense class from the listed funds for the period July 1, 1992, through June 30, 1994:

FOR:	
Trustee and Benefit Payments	$62,000
FROM:	
Miscellaneous Revenue Fund	$62,000

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 39
(S.B. No. 1202)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR AND INDUSTRIAL SERVICES IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 181, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 181, Laws of 1992, there is hereby appropriated to the Department of Labor and Industrial Services the following amounts, to be

expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATION:				
FROM:				
Electrical Fund		$4,000	$1,600	$5,600
Plumbing Fund		2,100	900	3,000
Building Fund		1,500	700	2,200
Miscellaneous Revenue Fund		1,400	600	2,000
TOTAL		$9,000	$3,800	$12,800
B. SAFETY COMPLIANCE:				
FROM:				
Electrical Fund	$80,000	$31,300	$15,600	$126,900
Plumbing Fund		13,600	26,000	39,600
Building Fund		3,400		3,400
TOTAL	$80,000	$48,300	$41,600	$169,900
C. INDUSTRIAL RELATIONS AND SAFETY:				
FROM:				
Miscellaneous Revenue Fund		$3,200		$3,200

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 40
(H.B. No. 24)

AN ACT

RELATING TO HOSPITALIZATION OF TUBERCULOSIS PATIENTS; REPEALING SECTIONS 39-501 THROUGH 39-517, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 39-501 through 39-517, Idaho Code, be, and the same are hereby repealed.

Approved March 16, 1993.

CHAPTER 41
(H.B. No. 121)

AN ACT

RELATING TO FEES FOR COUNTY SERVICES; AMENDING SECTION 31-870, IDAHO CODE, TO PROVIDE THAT FEES MAY BE ESTABLISHED FOR CERTAIN SERVICES

AND SHALL BE CERTIFIED AND COLLECTED IN THE MANNER OF REAL OR PERSONAL PROPERTY TAXES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-870, Idaho Code, be, and the same is hereby amended to read as follows:

31-870. FEES FOR COUNTY SERVICES. (1) Notwithstanding any other provision of law, a board of county commissioners may impose and collect fees for those services provided by the county which would otherwise be funded by ad valorem tax revenues. The fees collected pursuant to this section shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered. Taxing districts other than counties may impose fees for services as provided in section 63-2201A, Idaho Code.

(2) The board of county commissioners may establish and provide for the collection of a solid waste fee in accordance with a request made pursuant to this section, and such fee shall be certified and collected in the same manner provided by law for the collection of real or personal property taxes.

Approved March 16, 1993.

CHAPTER 42
(H.B. No. 128)

AN ACT

RELATING TO THE IDAHO CREDIT CODE; AMENDING SECTION 28-44-108, IDAHO CODE, TO PROVIDE THAT A CREDITOR IS NOT REQUIRED TO REFUND TO THE DEBTOR PREPAID CREDIT INSURANCE PREMIUMS LESS THAN FIVE DOLLARS UPON PREPAYMENT OF THE DEBTOR'S REGULATED CONSUMER CREDIT SALE OR REGULATED CONSUMER LOAN BY THE PROCEEDS OF CREDIT INSURANCE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 28-44-108, Idaho Code, be, and the same is hereby amended to read as follows:

28-44-108. REFUND OR CREDIT REQUIRED -- AMOUNT. (1) Upon prepayment in full of a regulated consumer credit sale or regulated consumer loan by the proceeds of credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer, unless the charge was computed from time to time on the basis of the balances of the debtor's account.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this chapter amount to less than ~~one~~ five dollars ($~~1~~5.00), and except as provided in subsection (1) of this section, does not require

the creditor to account to the debtor for any portion of a separate charge for insurance because:

(a) The insurance is terminated by performance of the insurer's obligation;

(b) The creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) The creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law, or regulations prescribed by the director of the department of insurance.

(3) Except as provided in subsection (2) of this section, the creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if:

(a) The insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or

(b) The insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) of this section is appropriate as to amount if it is computed according to a method prescribed or approved by the director of the department of insurance or a formula filed by the insurer with the director of the department of insurance at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is employed after the director of the department of insurance notifies the insurer that he disapproves it.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 16, 1993.

CHAPTER 43
(H.B. No. 61)

AN ACT

RELATING TO THE STATE FIRE MARSHAL; AMENDING SECTION 41-254, IDAHO CODE, TO CHANGE THE FILING DATE FOR THE STATE FIRE MARSHAL'S ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE FROM FEBRUARY 15 TO JULY 15.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-254, Idaho Code, be, and the same is hereby amended to read as follows:

41-254. POWERS AND DUTIES OF STATE FIRE MARSHAL -- UNIFORM FIRE CODE, ENFORCEMENT AND REGULATIONS -- REPORTS. The state fire marshal shall be appointed by the director of the department of insurance, with the approval of the governor and shall serve at the pleasure of

the director. The state fire marshal shall have the following powers and duties:

1. To enforce the uniform fire code.

2. To prescribe regulations in addition to the uniform fire code as adopted, which may be deemed necessary for the prevention of fires and protection of life and property, and such regulations are to be enforced by the state fire marshal.

3. To make interpretations and rules of the intent of the various provisions of the uniform fire code as adopted.

4. To adopt, rescind, modify or amend rules and regulations for the exercise of functional powers and duties.

5. To transmit to the governor and legislature, on or before the 15th day of ~~February~~ July of every year, a full report of proceedings under this act and such statistics as he may wish to include therein unless some other time for reporting is fixed by law, and such report shall be available to the public.

6. To make recommendations for amendments to the uniform fire code to be submitted to the promulgating authority for its consideration.

7. No person shall be eligible to serve as state fire marshal unless he:

(a) Has had at least twelve (12) years' full-time paid experience with a state, city or county fire protection agency whose primary function is fire prevention and structural fire safety, including at least five (5) years' experience in an administrative capacity as the chief agency officer; or

(b) Holds a four (4) year college degree in one of the physical sciences and has had at least five (5) years' full-time experience in fire protection and structural fire safety with a fire protection agency; or

(c) Is a member of the American society of fire protection engineers.

Approved March 17, 1993.

CHAPTER 44
(H.B. No. 68)

AN ACT

RELATING TO WATER AND SEWER DISTRICTS; AMENDING SECTION 42-3209, IDAHO CODE, TO INCREASE THE COMPENSATION OF MEMBERS OF THE BOARDS OF WATER AND SEWER DISTRICTS TO FIFTY DOLLARS PER MEETING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-3209, Idaho Code, be, and the same is hereby amended to read as follows:

42-3209. ORGANIZATION OF BOARD -- ACCOUNTS OF TREASURER -- COMPENSATION OF MEMBERS -- ANNUAL AUDIT -- REMOVAL OF DIRECTORS. After taking oath and filing bonds, the board shall choose one (1) of its

members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may or may not be members of the board. The secretary and the treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of real property in the district, as well as to all other interested parties.

The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than $5,000, conditioned on the faithful performance of the duties of his office.

Each member of the board shall receive as compensation for his service a sum not in excess of ~~twenty-five~~ fifty dollars ($~~25~~50.00) per meeting, payable monthly. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that herein provided, and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

It shall be the duty of the board of directors to cause an audit to be made of all financial affairs of the district during each year ending November 30th, which audit shall be made during the last month of each calendar year. A financial statement shall be certified by the person making such audit, which shall be published in a newspaper of general circulation in the district, in one (1) issue during the first week of January following the audit. Such audit shall be made by a registered accountant or certified public accountant, who is not otherwise employed by the district.

The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing.

Approved March 17, 1993.

CHAPTER 45
(H.B. No. 79, As Amended)

AN ACT

RELATING TO THE SALARIES OF THE MEMBERS OF THE PUBLIC UTILITIES COMMISSION; AMENDING SECTION 61-215, IDAHO CODE, TO ESTABLISH THE ANNUAL SALARY OF A MEMBER OF THE PUBLIC UTILITIES COMMISSION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 61-215, Idaho Code, be, and the same is hereby amended to read as follows:

61-215. SALARIES OF PUBLIC UTILITIES COMMISSIONERS. Each member of the public utilities commission shall devote full time to the per-

formance of his duties and shall each receive an annual salary ~~of fifty-five thousand dollars ($55,000)~~ as follows: Commencing on July 1, 1993, an annual salary of sixty thousand dollars ($60,000); commencing on July 1, 1994, an annual salary of sixty-five thousand dollars ($65,000); and commencing on July 1, 1995, an annual salary of seventy thousand dollars ($70,000), notwithstanding the provisions of section 59-510, Idaho Code, and shall be paid from sources set by the legislature.

Approved March 17, 1993.

CHAPTER 46
(H.B. No. 92)

AN ACT

RELATING TO WITNESSES; AMENDING SECTION 18-2604, IDAHO CODE, TO PROVIDE A PENALTY FOR INTIMIDATING, THREATENING OR HARASSING A WITNESS WHO PROVIDES TESTIMONY IN A CIVIL OR CRIMINAL PROCEEDING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-2604, Idaho Code, be, and the same is hereby amended to read as follows:

18-2604. INTIMIDATING~~, IMPEDING, INFLUENCING OR PREVENTING THE ATTENDANCE OF~~ A WITNESS. (1) Any person who, by direct or indirect force, or by any threats to a person or property, or by any manner wilfully intimidates, influences, impedes, deters, threatens, harasses, obstructs or prevents ~~or attempts to intimidate, influence, impede, deter, threaten, harass, obstruct or prevent~~ a witness, or any person ~~he believes has been or~~ who may be called as a witness or any person he believes may be called as a witness in any civil proceeding from testifying freely, fully and truthfully in that civil proceeding is guilty of a misdemeanor.

(2) Any person who, by direct or indirect force, or by any threats to a person or property, or by any manner wilfully intimidates, threatens or harasses any person because such person has testified or because he believes that such person has testified in any civil proceedings is guilty of a misdemeanor.

(3) Any person who, by direct or indirect force, or by any threats to person or property, or by any manner wilfully intimidates, influences, impedes, deters, threatens, harasses, obstructs or prevents, ~~or attempts to intimidate, influence, impede, deter, threaten, harass, obstruct or prevent~~ a witness or any person ~~he believes has been or~~ who may be called as a witness or any person he believes may be called as a witness in any criminal proceeding from testifying freely, fully and truthfully in that criminal proceeding is guilty of a felony.

(4) Any person who, by direct or indirect force, or by any threats to a person or property, or by any manner wilfully intimidates, threatens or harasses any person because such person has testi-

fied or because he believes that such person has testified in any criminal proceedings is guilty of a felony.

(~~3~~5) The fact that a ~~witness~~ person was not actually prevented from testifying shall not be a defense to a charge brought under subsection (1), ~~or~~ (2), (3) or (4) of this section.

Approved March 17, 1993.

CHAPTER 47
(H.B. No. 94)

AN ACT

RELATING TO INCOME TAXES; REPEALING SECTIONS 63-3068 AND 63-3072, IDAHO CODE; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3068, IDAHO CODE, PROVIDING A STATUTE OF LIMITATIONS ON ASSESSMENT OF TAX; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3072, IDAHO CODE, PROVIDING A STATUTE OF LIMITATIONS ON REFUNDS OF TAX; AMENDING SECTION 63-2410, IDAHO CODE, TO COORDINATE THE STATUTES OF LIMITATIONS ON CLAIMS FOR REFUNDS OF TAX ON MOTOR FUELS WHEN SUCH REFUNDS ARE CLAIMED ON INCOME TAX RETURNS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 63-3068 and 63-3072, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3068, Idaho Code, and to read as follows:

63-3068. PERIOD OF LIMITATIONS FOR ISSUING A NOTICE OF DEFICIENCY AND COLLECTION OF TAX. (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of six (6) years from the date of assessment of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) In the case of a failure to file a return, for any reason, a

notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) In the case of income received during the lifetime of a decedent, a notice of deficiency shall be issued, the tax shall be assessed or any proceeding in court without assessment for the collection of such tax shall be begun, within six (6) months after written request therefore (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent.

(f) When state taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitation for issuing a notice of deficiency shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the state tax commission by the taxpayer, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (a) and (1) of this section, only those specific items of income, deductions, gains, losses, or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(g) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss claimed in such other tax year may be made and a resulting notice of deficiency may be issued even though such notice of deficiency would otherwise be barred under the provisions of this section.

(h) Notwithstanding any other provisions of this section, when an amended Idaho return is filed within the period of limitations as provided in subsections (a) and (1) of this section, the period of limitations for issuing a notice of deficiency shall be three (3) years from the date the amended return was filed. However, upon the expiration of the period of limitations as provided in subsections (a) and (1) of this section, only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended Idaho return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(i) If a taxpayer has filed an amended federal return, and no corresponding Idaho amended return has been filed with the state tax commission, then the period of limitations for issuing a notice of deficiency shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the taxpayer

of the amended federal return. However, upon the expiration of the period of limitations as provided in subsections (a) and (l) of this section, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(j) Notwithstanding any other provisions of this section, a notice of deficiency, related to items on the return of any pass-through entity, as defined in this section, which other taxpayers are required by law to report, shall be issued to such other taxpayers within the later of three (3) years from the due date of the other taxpayers' return, without regard to extensions, three (3) years from the date the other taxpayers' returns were filed, or three (3) years from the date of filing of the pass-through entity's return. If the pass-through entity files an amended return, notices of deficiency may be issued to the other taxpayers within three (3) years from the date the amended return for the pass-through entity was filed with the state tax commission. If the pass-through entity files an amended return with the internal revenue service, or the internal revenue service issues a final determination to the pass-through entity, then the period of limitations for issuing a notice of deficiency to the other taxpayers shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the pass-through entity of the amended federal return or the later of one (1) year from the date of delivery to the state tax commission by the pass-through entity of the final federal determination, three (3) years from the due date of the pass-through entity's return, without regard to extensions, or three (3) years from the date the pass-through entity's return was filed.

(k) For purposes of this section, "pass-through entity" means a partnership, S-corporation, trust, limited liability company or any other entity whose items of income, deductions, gains, losses and credits must be reported by other taxpayer(s). For further purposes of this section, the term "other taxpayer" shall include, by way of unlimiting example, such taxpayers as partners, shareholders, beneficiaries, joint venturers or investors.

(l) Prior to the expiration of the time prescribed in this section for the issuance of a notice of deficiency for the tax imposed in this chapter, both the state tax commission, its delegate or deputy, and the taxpayer may consent in writing to extend the period of time within which a notice of deficiency may be issued. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with this subsection, the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of issuing a notice of deficiency to the other taxpayers reflecting the adjustments to the pass-through entity's return.

(m) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the state tax commission is prohibited from issuing a notice of deficiency, making the assessment, or from collecting by levy or a pro-

ceeding in court, and for thirty (30) days thereafter.

SECTION 3. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3072, Idaho Code, and to read as follows:

63-3072. CREDITS AND REFUNDS. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (c) and (g) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the period of limitations prescribed in subsection (c) of this section, the

period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(h) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the taxpayer is prohibited from claiming a credit or refund of tax, penalties or interest imposed under the provisions of this chapter, and for thirty (30) days thereafter.

(i) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

SECTION 4. That Section 63-2410, Idaho Code, be, and the same is hereby amended to read as follows:

63-2410. REFUND OF GASOLINE TAX PROCEDURE. (1) Any person who shall purchase fifty (50) gallons or more, and use the gasoline in motor vehicles operated on highways outside of the state of Idaho where a duplicate tax is assessed for the same gasoline, shall be entitled to refund when a claim is presented to the commission ~~within one--(1)--year-from-date-of-purchase~~ in the manner required in subsection (5)(c) of this section. Claimant shall present to the commission a statement accompanied by a verification of the use determined by an audit of his operations conducted as prescribed by the tax commission; or his claim may be verified by the filing of a receipt or proof showing the payment of tax on the gasoline used in any other state.

(2) Any person who shall purchase within any one (1) calendar year fifty (50) gallons or more of gasoline used for the purposes described in this subsection shall be entitled to be refunded the amount of gasoline tax previously paid on that gasoline. Exempt uses are:

(a) Operating stationary gasoline engines;

(b) Propelling equipment or vehicles, other than motor vehicles,

which are not operated on a highway; and

(c) Operating commercial motor boats.

(3) No refund of gasoline tax shall be allowed for any gasoline:

(a) Used in motor vehicles required to be licensed or used in any motor vehicle exempt from registration by reason of the ownership or residence; or

(b) Aircraft engine fuel placed in aircraft; or

(c) Gasoline used in recreational vehicles; or

(d) Gasoline used in noncommercial motor boats.

(4) Any licensed distributor paying the gasoline tax and/or aircraft engine fuel tax to the state of Idaho erroneously shall be allowed a credit or refund of the amount of tax paid by him if a written claim for refund is filed with the commission within three (3) years after the date those taxes were paid. Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from the date taxes to be refunded or credited were paid to the commission.

(5) (a) All claims for refund of gasoline taxes arising under subsection (1) or (2) of this section shall be filed in conjunction with the claimant's income tax return due pursuant to chapter 30, title 63, Idaho Code. The gasoline tax refund claimed shall be tax paid on gasoline actually purchased during the taxable year to which the income tax return relates. The gasoline tax refund due shall be offset against any other taxes, penalties or interest due before any balance is refunded by the commission to the claimant. Subject to a limitation as to the amount of refund to be claimed as the commission may provide by regulation, refund claims may be submitted and paid on a quarterly basis and reconciled on the income tax return when it is filed.

(b) If a claimant is not required to file an income tax return, the refund claim shall be made on forms and in the manner as the commission may provide. The claim shall relate to taxes paid on gasoline actually purchased in the calendar year preceding the filing and the claim shall be filed on or before April 15 following the close of the calendar year.

(c) Claims for refunds under subsection (1) or (2) of this section shall be filed within the time and in the manner prescribed in section 63-3072, Idaho Code.

(d) The commission may require that all claims be accompanied by the original signed invoice or invoices issued to the claimant, showing the total amount of gasoline on which a refund is claimed and the reason, the amount of the tax and any additional information required by the commission. Each separate delivery shall constitute a purchase and a separate invoice shall be prepared, at least in duplicate, to cover the delivery. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or double-spaced carbon shall be used between the original and first duplicate.

(6) (a) Should the commission find that the claim contains errors, it may correct the claim and approve it as corrected, or the commission may require the claimant to file an amended claim. The commission may require any person who makes a claim for refund to furnish a statement under oath, giving his occupation, descrip-

tion of the machine or equipment in which the gasoline was used, the place where used and any other information as the commission may require. If the commission determines that any claim has been fraudulently presented, or is supported by an invoice or invoices fraudulently made or altered, or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the commission may reject the claim in full. If the claim is rejected, the commission may suspend the claimant's right to any refund for purchases made during a period not to exceed one (1) year beginning with the date the rejected claim was filed, and it shall take all other action deemed appropriate.

(b) The commission has authority, in order to establish the validity of any claim, to examine the books and records of the claimant for that purpose, and failure of the claimant to accede to the demand for the examination may constitute a waiver of all rights to the refund claimed.

(7) In the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit a duplicate copy of the invoice certified by the vendor, but payment based on the duplicate invoice shall not be made until one (1) year after the date on which the gasoline was purchased.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993. The provisions of this act apply to all returns, amendments to returns, claims for refund or credit of tax, notices of deficiency and other actions taken after the effective date of this act without regard to the taxable year effected, unless the statutes of limitations, as provided in sections 63-3068 and 63-3072, Idaho Code, in effect on December 31, 1992, would have prevented the action on the effective date of this bill.

Approved March 17, 1993.

CHAPTER 48
(H.B. No. 106)

AN ACT

RELATING TO CREDIT INSURANCE; AMENDING SECTION 41-2303, IDAHO CODE, TO PROVIDE THAT THE CREDIT LIFE AND CREDIT DISABILITY INSURANCE ACT SHALL NOT APPLY TO LIFE INSURANCE AND DISABILITY INSURANCE IN CONNECTION WITH LOANS OR OTHER CREDIT TRANSACTIONS WITH A TERM OF MORE THAN FIFTEEN YEARS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-2303, Idaho Code, be, and the same is hereby amended to read as follows:

41-2303. SCOPE OF CHAPTER. All life insurance and all disability

insurance in connection with loans or other credit transactions shall be subject to the provisions of this chapter; except, that insurance in connection with a loan or other credit transaction of more than ~~ten~~ fifteen (1~~0~~5) years duration shall not be subject to this chapter, nor shall insurance be subject to this chapter where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

Approved March 17, 1993.

CHAPTER 49
(H.B. No. 115)

AN ACT
RELATING TO THE PRACTICE OF PHARMACY; AMENDING SECTIONS 54-1704 AND 54-1705, IDAHO CODE, TO PROVIDE PROPER DEFINITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1704, Idaho Code, be, and the same is hereby amended to read as follows:

54-1704. PRACTICE OF PHARMACY. ~~The~~ "p~~P~~ractice of pharmacy" ~~shall~~ means the interpretation, ~~and~~ evaluation and dispensing of prescription drug orders; ~~the~~ participation in drug and device selection, drug administration, drug regimen reviews and drug or drug-related research; provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care; and the responsibility for: compounding~~, dispensing,~~ and labeling of drugs and devices~~,~~ (except labeling by a manufacturer, ~~packer~~ repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices); ~~the participation in drug selection and prospective drug review and the~~ proper and safe storage of drugs and devices, and maintenance of proper records ~~therefor~~ for them; ~~counseling as defined in section 54-1705, Idaho Code;~~ and the offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy.

SECTION 2. That Section 54-1705, Idaho Code, be, and the same is hereby amended to read as follows:

54-1705. DEFINITIONS. (1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Counseling or counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices. Specific areas of counseling shall include, but are not limited to:

(a) Name and strength and description of the medication;

(b) Route of administration, dosage, dosage form, continuity of

therapy and refill information;

(c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;

(d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the medication or device as was intended by the prescriber, and the action required if they occur;

(e) Techniques for self-monitoring drug therapy; and

(f) Action to be taken in the event of a missed dose.

(3) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(4) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, invitro reagent or other similar related article including any component part or accessory which is:

(a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;

(b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Intended to effect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(5) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Distribute" means the delivery of a drug other than by administering or dispensing.

(7) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(8) "Drug order" means a written order, in a hospital or other health care institution, for an ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by other means of communication from a practitioner, which is immediately reduced to writing by a pharmacist, registered nurse or other licensed health care practitioner authorized by the hospital or institution.

The order shall contain the name and bed number of the patient, the name and strength or size of the drug or device, unless specified by individual institution policy or guideline, the amount to be dispensed, either in quantity or days, adequate directions for the proper use of the drug or device when it is administered to the patient, and the name of the prescriber.

(9) "Drug outlet" means all pharmacies, nursing homes, residential care homes, convalescent homes, extended care facilities, drug abuse treatment centers, penal institutions, hospitals, family planning clinics, retail stores, wholesalers, manufacturers and mail order vendors with facilities located in this state which are engaged in dispensing, delivery or distribution of drugs and drug manufacturers and wholesalers with facilities located outside the state, but doing business within this state.

(10) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription or medication order for:

1. Known allergies;
2. Rational therapy contraindications;
3. Reasonable dose and route of administration; and
4. Reasonable directions for use.

(b) Evaluation of the prescription or medication order for duplication of therapy.

(c) Evaluation of the prescription or medication order for interactions:

1. Drug-drug;
2. Drug-food; and
3. Drug-disease.

(d) Evaluation of the prescription or medication order for proper utilization:

1. Over or under utilization; and
2. Abuse/misuse.

(11) "Extern" means a bona fide student enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy.

(12) "Externship" means a structured practical experience program in pharmacy, approved by the board and administered by a college of pharmacy.

(13) "Intern" means any person who has completed a course of study at an approved college of pharmacy, received the first professional degree in pharmacy and is registered with the board as an intern. Interns must register with the board prior to commencement of an internship program.

(14) "Internship" means a postgraduate practical experience program under the supervision of a licensed pharmacist registered as a preceptor.

(15) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(16) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor ~~or~~ <u>of</u> a nonprescription drug or commercially packaged legend drug or device. Any such label shall

include all information required by federal and state law or regulation.

(17) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering or dispensing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(18) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(19) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(20) "Person" means an individual, corporation, partnership, association or any other legal entity.

(21) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the regulations of the board.

(22) "Pharmacist" means an individual licensed by this state to engage in ~~the practice~~ of pharmacy.

(2~~2~~3) "Pharmacy" means any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(2~~3~~4) "Practitioner" shall mean a physician, dentist, veterinarian, scientific investigator or other person (other than a pharmacist) licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(2~~4~~5) "Preceptor" means a pharmacist licensed in the state and in good standing, who supervises the internship training of a registered intern. The preceptor must be registered as a preceptor and shall be actively engaged on a full-time employment basis in the approved

training area.

(2~~5~~6) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(a) "Caution: Federal law prohibits dispensing without a prescription;" or

(b) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian;"

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(2~~6~~7) "Prescription drug order" means a lawful written or verbal order of a practitioner for a drug.

(2~~7~~8) "Nonprescription drugs" mean medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(2~~8~~9) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(~~29~~30) "Sale" means every sale and includes:

(a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;

(b) Exposure, offer, or any other proffer;

(c) Holding, storing or any other possession;

(d) Dispensing, giving, delivering or any other supplying; and

(e) Applying, administering or any other usage.

(~~28~~31) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

(3~~0~~2) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2) (a) through (f) of section 54-1734, Idaho Code.

Approved March 17, 1993.

CHAPTER 50
(H.B. No. 117)

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES; AMENDING SECTIONS 39-141 AND 39-144, IDAHO CODE, TO UPDATE DEFINITIONS OF AN AMBULANCE, CERTIFIED PERSONNEL AND AMBULANCE MINIMUM STANDARDS TO REFLECT CURRENT TERMINOLOGY AND STANDARDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-141, Idaho Code, be, and the same is

hereby amended to read as follows:

39-141. DEFINITIONS. As used in this act:

(1) "Ambulance" means any privately or publicly owned ~~motor~~ ground vehicle ~~that--is--specifically--designed--or-constructed,-and equipped,-and-is~~, nautical vessel, fixed wing aircraft or rotary wing aircraft used for, or intended to be used for ~~and-is-maintained-or operated-for~~ the transportation of ~~patients,--including--dual--purpose police-patrol-cars-and-funeral-coaches-or-hearses~~ sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with the provisions of this act and specifications established by the board.

(2) "Board" means the Idaho board of health and welfare.

(3) "Certified Basic Life Support Personnel" means individuals who have completed and successfully passed examinations for training and skills proficiency in one (1) or several levels of basic life support activity as prescribed and certified by the department of health and welfare. These several levels of basic life support services shall include:

(a) FR -- "First Responder" (hereafter FR) means an individual certified by the EMS bureau of the Idaho department of health and welfare as a FR on the basis of successful completion of a FR course approved by the board and subsequent required continuing training.

(b) EMT-B -- "Emergency Medical Technician-Basic" (hereafter EMT-B) means an individual certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of an EMT-B course approved by the board and subsequent required continuing training.

(c) ~~EMT-A-----"Emergency-Medical-Technician-Ambulance"-(hereafter EMT-A)~~ "Ambulance Rating" means ~~an-individual-certified~~ a certification issued by the EMS bureau of the Idaho department of health and welfare to an EMT-B on the basis of successful completion of ~~an-EMT-course-approved-by-the-board-and--in--addition,--successful completion--of~~ supervised infield ambulance experience~~,-and-subsequent-required-continuing-training~~ as defined by the board.

(4) "Emergency Medical Services" mean the services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(5) "Non-Transport Vehicle" means any vehicle licensed by the department of health and welfare, EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons.

(6) "Transfer" means the transportation of a patient from one (1) medical care facility to another.

SECTION 2. That Section 39-144, Idaho Code, be, and the same is hereby amended to read as follows:

39-144. AMBULANCE MINIMUM STANDARDS. Each ambulance service shall meet the following standards by July 1, 19~~77~~93:

(1) Ambulance vehicles — Each new ambulance vehicle purchased after the effective date of these standards shall ~~have a minimum of four (4) stretcher patient capacity, minimum patient compartment headroom of sixty inches (60"), and shall otherwise generally~~ conform to the ambulance vehicle specifications for that type established by the board. The patient compartment of each ambulance vehicle shall be maintained in a clean and sanitary condition.

(2) Ambulance equipment -- Each ambulance shall be equipped with the patient care items deemed essential for for that type of ambulances by the board.

(3) Ambulance personnel -- There shall be at least two (2) ambulance crew members on each ~~call~~ patient transport, with the crew member delivering patient care being, at a minimum, a state certified emergency medical technician (EMT), except that with the patient's ~~or~~ and the patient's physician's permission, an EMT attendant shall not be required on routine, nonemergency transfer calls.

(4) Ambulance ~~service~~ dispatch -- Each ambulance service shall have a twenty-four (24) hour dispatch arrangement and shall respond to calls on a twenty-four (24) hour basis.

(5) Ambulance inspections and licensing -- The department of health and welfare, EMS bureau, shall conduct inspections at least annually related to ambulance service licensing or shall contract to have the inspections carried out. Each ambulance and nontransport vehicle shall have a current state license in order to operate.

(6) Ambulance minimum standards waiver -- The controlling authority providing ambulance services may petition the board of health and welfare for waiver of the ambulance standards of this act, if compliance with these standards would cause undue hardship on the community being served, or would result in abandonment of ambulance services.

(7) All ambulances in service on the effective date of this act are accorded "grandfather rights," and are therefore exempt from the ambulance vehicle specifications established by the board, whether or not such ambulances continue under the control of the same authority.

Approved March 17, 1993.

CHAPTER 51
(H.B. No. 123)

AN ACT

RELATING TO SCHOOL DISTRICT TRUSTEE ELECTIONS; AMENDING SECTION 33-502B, IDAHO CODE, TO ALLOW THE SCHOOL DISTRICT CLERK TO PERFORM CERTAIN MINISTERIAL FUNCTIONS UPON WRITTEN PERMISSION OF THE BOARD OF TRUSTEES AND TO PROVIDE THAT SUCH FUNCTIONS BE PERFORMED WITHIN FOUR DAYS OF AN ELECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-502B, Idaho Code, be, and the same is hereby amended to read as follows:

33-502B. BOARD OF TRUSTEES -- ONE NOMINATION -- NO ELECTION. In any election for trustees, if, after the expiration of the date for filing written nominations for the office of trustee, it appears that only one (1) qualified candidate has been nominated for a position to be filled and if no declaration of intent has been filed as provided by section 33-502A, Idaho Code, no election shall be held for that position, and the board of trustees or the school district clerk with the written permission of the board, shall within ~~three~~ four (~~3~~4) days before the scheduled date of the election declare such candidate elected as a trustee, and the school district clerk shall immediately prepare and deliver to the person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this section shall not apply to any other school district election.

Approved March 17, 1993.

CHAPTER 52
(H.B. No. 124)

AN ACT

RELATING TO DEPOSITORY INSTITUTIONS AND THE DAYS DURING WHICH THEY MAY BE OPEN; AMENDING SECTION 26-309, IDAHO CODE, TO CLARIFY LANGUAGE WITH RESPECT TO BANKING HOURS; AMENDING SECTION 26-716, IDAHO CODE, TO DELETE RESTRICTIONS ON OPENING BANKS ON SATURDAYS AND LEGAL HOLIDAYS; AMENDING SECTION 26-1855, IDAHO CODE, TO DELETE RESTRICTIONS ON OPENING SAVINGS AND LOAN ASSOCIATIONS ON LEGAL HOLIDAYS; AMENDING SECTION 26-1856, IDAHO CODE, TO CLARIFY LANGUAGE WITH RESPECT TO HOURS DURING WHICH SAVINGS AND LOANS MAY BE OPEN; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 26-309, Idaho Code, be, and the same is hereby amended to read as follows:

26-309. CUSTOMER-BANK COMMUNICATION TERMINAL. A bank may make available for use by its customers one (1) or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification on line or off line by the bank. Any transactions initiated through such a device shall be subject to verification by the bank either by direct wire transmission or otherwise. Such facilities may be unmanned or manned.

A person may perform as would a device so long as the person does not perform any functions not specifically authorized by this section.

These devices shall be designated as a customer-bank communication terminal (CBCT). The use of a CBCT at locations other than the main office or a branch office of the bank does not constitute branch bank-

ing. A bank shall provide insurance protection under its bonding program for transactions involving such devices.

(1) The establishment and use of a CBCT is subject to the following limitations:

(a) Written notice must be given to the director's office no less than thirty (30) days before any CBCT is put into operation. Any bank presently utilizing a CBCT shall comply with the notice requirements within thirty (30) days. Such notice shall describe with regard to the communication system:

1. the location;
2. a general description of the area where located and the manner of installation;
3. the manner of operation;
4. the kinds of functions which will be performed;
5. whether the CBCT will be shared, and, if so, under what terms and with what other institutions and their location;
6. the manufacturer and, if owned, the purchase price or, if leased, a copy of the lease;
7. the distance from the nearest banking office and from the nearest similar CBCT of the reporting bank; and
8. the distance from the nearest banking office and nearest CBCT of another commercial bank, which will share the facility, and the name of such other bank or banks.

(b) The functions of the CBCT shall be limited to:

1. the receiving of deposits;
2. the cashing of checks;
3. the dispensing of cash;
4. payment of loan proceeds on a prearranged line of credit;
5. the communication of other such information directly related to the customer's account; and
6. receiving loan payments.

(c) Arrangements may be made at the CBCT for the placing or installation of a receptacle in which a customer may place packaged communication intended for the bank.

(d) The CBCT shall be a communication service available only to customers of the bank or other financial institution which the management of the bank may approve.

(e) The CBCT shall not be advertised as full service banking or as performing anything other than activities set out in subsection (1)(b) of this section.

(2) To the extent consistent with the anti-trust laws, banks are required to share unmanned CBCTs at a reasonable fee with one (1) or more other financial institutions if requested by the other financial institution.

(3) The director may issue a cease and desist order upon a finding that a bank utilizing a CBCT is doing so in a manner not specifically authorized ~~by~~ in this section.

(4) ~~The provisions of section 26-716, Idaho Code, which prohibit a bank from transacting business on Saturdays and legal holidays shall not apply to customer bank communication terminals operated under the provisions of this section.~~

~~(5) After banking hours, Saturdays and holidays, CBCT customers shall not have access to lobby areas (as defined by the director by~~

~~regulation)-used-primarily-for-a-bank,-branch-or-facility.~~

~~(6)~~ This section and regulations adopted pursuant to it shall be deemed to apply to national banks operating customer-bank communication terminals and for the purpose of the bank act a financial institution shall mean any state or federally chartered commercial bank, savings and loan association or credit union authorized by the department of finance or a comparable federal agency to do business in the state of Idaho.

SECTION 2. That Section 26-716, Idaho Code, be, and the same is hereby amended to read as follows:

26-716. VALIDITY OF TRANSACTIONS ~~ON-HOLIDAYS-AND-SATURDAYS~~. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours ~~or-on-a-legal-holiday-or Saturday.--No-bank-in-this-state-shall-keep-open--for--transaction--of banking--business,-or-perform-any-of-the-acts-or-transaction-of-a-commercial-bank-on-any--Saturday--or--on--any--legal--holiday.---Any--act appointed--by-law-or-contract,-or-in-any-other-way,-to-be-performed-on Saturday-by-any-bank,-or-branch-or-office-thereof,-whether--acting--in its--own--behalf--or-in-any-capacity-whatsoever,-may-be-performed-upon the-next-succeeding-business-day,-and-no-liability-or-loss--of--rights of-any-kind-shall-result-from-such-delay.~~

SECTION 3. That Section 26-1855, Idaho Code, be, and the same is hereby amended to read as follows:

26-1855. VALIDITY OF TRANSACTIONS ~~ON--HOLIDAYS. No--savings--and loan--association--in-this-state-shall-remain-open-for-the-transaction of-business-on-any-legal-holiday--defined--in--section--73-108,--Idaho Code.~~ Any act appointed by law or contract to be performed on a legal holiday by ~~such~~ a savings and loan association may be performed upon the next successive business day and no liability or loss of rights of any kind shall result from such delay.

SECTION 4. That Section 26-1856, Idaho Code, be, and the same is hereby amended to read as follows:

26-1856. CUSTOMER SAVINGS AND LOAN COMMUNICATION TERMINAL. A savings and loan association may make available for use by its customers one or more electronic devices or machines through which the customer may communicate to the savings and loan association a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification on line or off line by the savings and loan. Any transactions initiated through such a device shall be subject to verification by the savings and loan association either by direct wire transmission or otherwise. Such facilities may be unmanned or manned.

A person may perform as would a device so long as the person does not perform any functions not specifically authorized by this section.

These devices shall be designated as a customer savings and loan communication terminal (CSLCT). The use of a CSLCT at locations other than the main office or a branch office of the savings and loan association does not constitute a branch. A savings and loan association shall provide insurance protection under its bonding program for transactions involving such devices.

(1) The establishment and use of a CSLCT is subject to the following limitations:

(a) Written notice must be given to the director's office no less than thirty (30) days before any CSLCT is put into operation. Any savings and loan association presently utilizing a CSLCT shall comply with the notice requirements within thirty (30) days. Such notice shall describe with regard to the communication system:

1. The location;
2. A general description of the area where located and the manner of installation;
3. The manner of operation;
4. The kinds of functions which will be performed;
5. Whether the CSLCT will be shared, and, if so, under what terms and with what other institutions and their location;
6. The manufacturer and, if owned, the purchase price, or, if leased, a copy of the lease;
7. The distance from the nearest savings and loan office and from the nearest similar CSLCT of the reporting savings and loan association; and
8. The distance from the nearest savings and loan office and nearest CSLCT of another savings and loan association, which will share the facility, and the name of such other savings and loan association or savings and loan(s) associations.

(b) The functions of the CSLCT shall be limited to:

1. The receiving of deposits;
2. The cashing of checks;
3. The dispensing of cash;
4. Payment of loan proceeds on a prearranged line of credit;
5. The communication of other such information directly related to the customer's account; and
6. Receiving loan payments.

(c) Arrangements may be made at the CSLCT for the placing or installation of a receptacle in which a customer may place packaged communication intended for the savings and loan association.

(d) The CSLCT shall be a communication service available only to customers of the savings and loan association or other financial institutions which the management of the savings and loan association may approve.

(e) The CSLCT shall not be advertised as a full-service branch or as performing anything other than activities set out in subsection (1)(b) of this section.

(2) To the extent consistent with the anti-trust laws, savings and loan associations are required to share unmanned CSLCT's at a reasonable fee with one or more other financial institutions if requested by the other financial institution.

(3) The director may issue a cease and desist order upon a finding that a savings and loan association utilizing a CSLCT is doing so in a manner not specifically authorized ~~by~~ in this section.

(4) ~~The provisions of section 26-1855, Idaho Code, which prohibit a savings and loan association from transacting business on Saturdays and legal holidays shall not apply to customer savings and loan communication terminals operated under the provisions of this section.~~

~~(5)~~ This section shall be deemed to apply to federal savings and loan associations operating customer savings and loan communication terminals and for the purpose of this ~~act~~ chapter a financial institution shall mean any state or federally chartered commercial bank, savings and loan association or credit union authorized by the department of finance or a comparable federal agency to do business in the state of Idaho.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 53
(H.B. No. 127)

AN ACT

RELATING TO BANKS AND BANKING; AMENDING SECTION 26-213, IDAHO CODE, TO ALLOW THE DIRECTOR OF FINANCE TO APPROVE FEWER THAN TEN DIRECTORS' MEETINGS PER YEAR; AMENDING SECTION 26-309, IDAHO CODE, TO ALLOW STATE BANKS TO PERFORM FUNCTIONS THROUGH CUSTOMER BANK COMMUNICATION TERMINALS IF THE FUNCTIONS ARE AUTHORIZED FOR NATIONAL BANKS AND ARE APPROVED BY THE DIRECTOR, TO CLARIFY AUTHORITY FOR INTERSTATE CBCT SYSTEMS AND FEES AND TO CLARIFY LANGUAGE; AMENDING SECTION 26-701, IDAHO CODE, TO ALLOW THE DIRECTOR TO APPROVE STATE BANKS BUYING AND SELLING GOODS TO THE EXTENT NATIONAL BANKS ARE AUTHORIZED; AMENDING SECTION 26-1212, IDAHO CODE, TO CLARIFY THE PROHIBITION ON DEPARTMENT OF FINANCE EMPLOYEES BORROWING FROM STATE BANKS; AMENDING SECTION 26-1213, IDAHO CODE, TO CLARIFY LANGUAGE REGARDING COMMISSIONS FOR MAKING LOANS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 26-213, Idaho Code, be, and the same is hereby amended to read as follows:

26-213. BOARD OF DIRECTORS -- ELECTION, MEETINGS, DUTIES, LIABILITIES, OATH, REMOVAL -- OFFICERS -- ELECTION AND BOND. (1) The affairs, business and property of a bank shall be managed and controlled by a board of not less than five (5) directors, who shall be elected by the stockholders at their regular stated annual meetings. A majority of said directors shall be residents of the state of Idaho.

(2) No person shall be eligible to serve as a director of any

bank organized or existing under the laws of this state, unless he shall be the owner in his own right of unhypothecated common stock of the bank in the amount of at least five hundred dollars ($500) par value. One (1) or more of the directors of a bank, the majority of the common stock of which is owned by a bank holding company, may satisfy the requirement of this subsection by owning in his own right at least five hundred dollars ($500) of the unhypothecated common stock of the bank holding company, either the par value or the book value.

(3) Any vacancy in the board of directors shall be filled by the board, and any directors so appointed shall hold office until the next annual meeting of stockholders. The board of directors shall immediately following each annual meeting of stockholders organize and elect a president, vice-president and cashier, who may also be the secretary and treasurer of the bank, and such other officers as shall be provided for in the bylaws, and shall fix the salary of all officers and employees or delegate such authority to its managing officer or officers. Directors of every bank shall hold at least ten (10) meetings per year; provided, no more than sixty-five (65) days may elapse between board of directors meetings, and complete records of such meetings shall be entered in the minute book and signed by both the chairman and the secretary. The director may approve, upon written application, a reduction in the number and frequency of directors' meetings.

(4) Whenever a vote is taken upon any matter, a record shall be kept and entered in the minutes of those voting in the affirmative and those voting in the negative. At every meeting it shall be the duty of the directors to familiarize themselves with loans and investments made since the previous regular meeting and any director may request a listing of all loans made since the previous regular meeting. It shall be the duty of the president and cashier to furnish such information to the directors. The directors shall familiarize themselves with the existing liabilities to the bank of every officer and director of their bank at least once during each calendar year. The minutes of the meeting shall record the approval or disapproval of loans, investments and liabilities of officers. Each officer and director who borrows money from the bank shall submit his personal financial statement to the chief executive officer of the bank at least once during each calendar year and such financial statements shall be made available to federal or state regulatory agencies upon request by the agency.

(5) Any director, officer or person who shall participate in any violation of the laws of this state relative to banks or banking, shall be liable for all damages which said bank, its stockholders, depositors, or creditors shall sustain in consequence of such violation. It shall be the duty of every director of a bank personally to attend all meetings of the board of directors unless unavoidably detained therefrom. Any director who shall habitually absent himself from such meeting shall be deemed to have participated in any violation of law that may have occurred in his absence, and he shall not be permitted to set up such absence as a defense thereto.

(6) Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office and will not knowingly violate or permit a violation of any provisions of the bank act, and such oath of office shall be transmitted to and filed with

the department of finance. A director may be removed from office at any time for violation of his oath of office by the affirmative vote of two-thirds (2/3) of the entire board, exclusive of the director to be removed.

(7) Every active officer and employee of any bank in this state shall furnish a surety bond in the penal sum of fifty thousand dollars ($50,000) to the bank by which he is employed for the faithful performance of his duties, executed by a surety company authorized to do business in the state of Idaho as a surety. In lieu of the individual surety bonds required by this section, a bank may provide a bankers blanket or financial institution bond in a minimum amount of two hundred fifty thousand dollars ($250,000). The conditions of such bond, whether the instrument so describes the conditions or not, shall be that the principal shall protect the obligee against any loss or liability that the obligee may suffer or incur by reason of the acts of dishonesty of the principal.

(8) In lieu of the bonds required in subsection (7) of this section, a bank may, with the approval of the director of the department of finance, provide to the director a certificate of deposit issued by any other bank in the state of Idaho. The principal amount of the certificate of deposit shall be payable to the director and shall be in an amount to be determined by the director, but not less than two hundred fifty thousand dollars ($250,000). The interest on the certificate of deposit shall be payable to the bank providing the certificate of deposit to the director. The certificate of deposit shall be maintained at all times the bank is authorized to do business under this chapter, and for a period of time thereafter to be determined by the director, but not to exceed three (3) years.

(9) Every bank shall provide adequate insurance protection or indemnity against robbery and burglary and other similar insurable losses.

(10) All surety bonds shall be approved by and filed with the directors. The directors or the director may require an increase of the amount of any such bond whenever either the directors or the director deem necessary for the better protection of the bank.

SECTION 2. That Section 26-309, Idaho Code, be, and the same is hereby amended to read as follows:

26-309. CUSTOMER-BANK COMMUNICATION TERMINAL. A bank may make available for use by its customers one (1) or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification on line or off line by the bank. Any transactions initiated through such a device shall be subject to verification by the bank either by direct wire transmission or otherwise. Such facilities may be unmanned or manned.

A person may perform as would a device so long as the person does not perform any functions not specifically authorized by this section.

These devices shall be designated as a customer-bank communication

terminal (CBCT). The use of a CBCT at locations other than the main office or a branch office of the bank does not constitute branch banking. A bank shall provide insurance protection under its bonding program for transactions involving such devices.

(1) The establishment and use of a CBCT is subject to the following limitations:

(a) Written notice must be given to the director's office no less than thirty (30) days before any CBCT is put into operation. Any bank presently utilizing a CBCT shall comply with the notice requirements within thirty (30) days. Such notice shall describe with regard to the communication system:

1. the location;
2. a general description of the area where located and the manner of installation;
3. the manner of operation;
4. the kinds of functions which will be performed;
5. whether the CBCT will be shared, and, if so, under what terms and with what other institutions and their location;
6. the manufacturer and, if owned, the purchase price or, if leased, a copy of the lease;
7. the distance from the nearest banking office and from the nearest similar CBCT of the reporting bank; and
8. the distance from the nearest banking office and nearest CBCT of another commercial bank, which will share the facility, and the name of such other bank or banks.

(b) The functions of the CBCT shall be limited to:

1. the receiving of deposits;
2. the cashing of checks;
3. the dispensing of cash;
4. payment of loan proceeds on a prearranged line of credit;
5. the communication of other such information directly related to the customer's account; and
6. receiving loan payments;
7. any other function authorized to be performed by national banks and approved by the director.

(c) Arrangements may be made at the CBCT for the placing or installation of a receptacle in which a customer may place packaged communication intended for the bank.

(d) The CBCT shall be a communication service available only to customers of the bank or other financial institution which the management of the bank may approve.

(e) The CBCT shall not be advertised as full service banking or as performing anything other than activities set out in subsection (1)(b) of this section.

(2) To the extent consistent with the anti-trust laws, banks are required to share unmanned CBCTs at a reasonable fee with one (1) or more other financial institutions if requested by the other financial institution. A bank may connect CBCTs with a regional or national consumer funds transfer system for the purpose of handling financial transactions of the kind authorized by subsection (1)(b) of this section. An agreement to share CBCT usage may not prohibit, limit or restrict the right of a bank to charge a customer any fee allowed by state or federal law or require the bank to limit or waive its rights

or obligations under the provisions of this section. No bank may impose a fee for the use of a CBCT by those using an access device not issued by that bank unless such fee is clearly disclosed to the customer at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the fee. The fee may be in addition to any other charges imposed on the user by the operator of any consumer funds transfer system or by the user's own financial institution.

(3) The director may issue a cease and desist order upon a finding that a bank utilizing a CBCT is doing so in a manner not specifically authorized by this section.

(4) The provisions of section 26-716, Idaho Code, which prohibit a bank from transacting business on Saturdays and legal holidays shall not apply to customer-bank communication terminals operated under the provisions of this section.

(5) After banking hours, Saturdays and holidays, CBCT customers shall not have access to lobby areas (as defined by the director by regulation) used primarily for a bank, branch or facility.

(6) This section and regulations adopted pursuant to it shall be deemed to apply to national banks operating customer-bank communication terminals and for the purpose of the bank act a financial institution shall mean any state or federally chartered commercial bank, savings and loan association or credit union authorized by the department of finance or a comparable federal agency to do business in the state of Idaho.

SECTION 3. That Section 26-701, Idaho Code, be, and the same is hereby amended to read as follows:

26-701. INVESTMENT OF FUNDS -- CERTAIN LOANS PROHIBITED. No bank shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling goods, chattels, wares and merchandise, except to the extent national banks are so authorized if approved by the director. A bank may hold and sell all kinds of property which may come into its possession as collateral security for loans, or any ordinary collection of debts, as prescribed by law. Any goods, chattels, wares or merchandise coming into the possession of any bank as collateral security or as a result of collection of debts shall be disposed of as soon as possible and shall not be considered as a part of the bank's assets after the expiration of two (2) years from the date of acquirement. The words "goods and chattels" as used in this section shall not be construed to include bonds and securities.

SECTION 4. That Section 26-1212, Idaho Code, be, and the same is hereby amended to read as follows:

26-1212. LOANS TO OFFICIALS OF DEPARTMENT PROHIBITED. It shall be unlawful for the department of finance, its director or employees engaged in bank examination or supervision, to borrow money directly or indirectly from any state bank, or director or official of a state bank. Any person violating the provision of this section shall be guilty of a felony.

SECTION 5. That Section 26-1213, Idaho Code, be, and the same is hereby amended to read as follows:

26-1213. COMMISSION FOR MAKING LOANS. No officer, director or employee of any bank or the bank holding company owning or controlling the bank shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension, or renewal by said bank of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a bank to its employees.

Any person violating the provisions of this section shall be guilty of a felony.

Approved March 17, 1993.

CHAPTER 54
(H.B. No. 147)

AN ACT

RELATING TO PESTICIDES; AMENDING SECTION 22-3402, IDAHO CODE, TO CORRECT A CODE REFERENCE ERROR; AMENDING SECTION 22-3404, IDAHO CODE, TO EXEMPT GOVERNMENT AGENCIES FROM LICENSING AND EXAMINATION FEE PROVISIONS; AMENDING SECTION 22-3405, IDAHO CODE, TO EXEMPT GOVERNMENT AGENCIES AND THE UNIVERSITY OF IDAHO RESEARCH AND EXTENSION PERSONNEL FROM EXAMINATION FEES; AMENDING SECTION 22-3406, IDAHO CODE, TO EXEMPT GOVERNMENT AGENCIES FROM LICENSING AND EXAMINATION FEES; AND AMENDING SECTION 22-3420, IDAHO CODE, TO REQUIRE ALL PESTICIDE USERS TO COMPLY WITH PESTICIDE LABEL DIRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-3402, Idaho Code, be, and the same is hereby amended to read as follows:

22-3402. REGISTRATION -- LABELS -- INFORMATION REQUIRED -- FEES.

(1) Any pesticide which is distributed within this state shall be registered with the department, and such registration whall be renewed annually.

(2) The registrant shall file with the department a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant; and

(b) the name of the pesticide; and

(c) a complete copy of the labeling except for annual renewals where the registrant has certified that the product label on file with the department is unchanged; and

(d) if requested by the director the registrant shall furnish efficacy data upon which all the label claims are based for those products registered for special local needs as provided for in Section 24(C) of the Federal Insecticide, Fungicide, Rodenticide

Act; and

(e) such other information as the director may require.

(3) Contents of the label:

(a) All pesticide labels shall contain statements, words, graphic material and any other information required by federal laws; and

(b) all labels for spray adjuvants shall contain but are not limited to:

1. The name of the pesticide; and

2. the name and address of the manufacturer. An unqualified name ~~and~~ and address listed on the label shall be considered the manufacturer's name and address; and

3. the registrant's name and address. If the registrant's name appears on the label and the registrant is not the manufacturer, it must be qualified by appropriate wording such as "packaged for or distributed by"; and

4. the net contents; and

5. the name and type of functioning agents. If more than three (3) agents are present, only the three (3) principal agents need be named; and

6. the total percentage of constituents ineffective as a spray adjuvant; and

7. directions for use.

(4) Pesticides which have identical ingredient statements, identical label claims, are manufactured by the same company, and the labels of which bear a designation identifying the products as the same pesticide may be registered as a single pesticide provided the additional product names and labels are supplied and specified as one (1) pesticide.

(5) The director may register a pesticide if he determines that, when considered in connection with any restrictions imposed under section 22-3419, Idaho Code:

(a) Its composition is such as to warrant the proposed claims for it; and

(b) its labeling and other material required to be submitted comply with requirements of federal law and Idaho law; and

(c) it will not cause an unreasonable adverse effect on the environment; and

(d) in the case of an application for registration for a special local need:

1. A special local need exists, and

2. authority to issue the registration in question has been obtained from the administrator of EPA, pursuant to Section 24(C), Federal Insecticide, Fungicide, Rodenticide Act.

(6) The registrant shall pay an annual registration fee as prescribed by regulation.

(7) If the application for renewal is not filed with the department prior to January 1 of each year a late penalty fee of five dollars ($5.00) per product shall be assessed and added to the original fee and shall be paid prior to the issuing of the renewal registration. No penalty fee shall be assessed if the applicant furnishes an affidavit stating that he did not distribute such unregistered pesticide subsequent to the expiration of registration of that pesticide.

(8) The director, whenever he deems it necessary in the adminis-

tration of this act, may require the submission of the complete formula of any pesticide.

(9) A registration shall expire on December 31 following issuance unless the registration has been suspended or revoked as provided for in paragraph (10) of this section.

(10) Refusal to register, suspension:

(a) If it does not appear to the director that the composition of the pesticide is such as to warrant the proposed claims for it, or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this act or regulations adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the director may refuse to register the pesticide. The applicant may request a hearing as provided for in the provisions of chapter 52, title 67, Idaho Code.

(b) When the director determines that a pesticide or its labeling does not comply with the provisions of this act or the regulations adopted thereunder, or when necessary to prevent unreasonable adverse effects on the environment he may suspend, revoke, or modify the registration of such pesticide in accordance with the provisions of chapter 52, title 67, Idaho Code.

(11) Exemptions:

(a) The following pesticides are exempt from subsection (1) of this section:

1. A pesticide that is shipped intrastate from one plant to another operated by the same person solely for the purpose of repackaging or for use as a constituent part of another pesticide produced at the second plant; and

2. a pesticide labeled for experimental use only under the provisions of Section 5 of the Federal Insecticide, Fungicide, Rodenticide Act or section 22-3404<u>3</u>, Idaho Code; and

3. a pesticide that is transported through the state to a destination outside of the state; and

4. a pesticide that is manufactured within the state solely for the purpose of exportation.

(b) Federal, state of Idaho, and other governmental agencies are exempt from subsections (6) and (7) of this section.

SECTION 2. That Section 22-3404, Idaho Code, be, and the same is hereby amended to read as follows:

22-3404. PESTICIDE APPLICATORS -- CLASSIFICATION LICENSING REQUIREMENTS. (1) The director may classify pesticide applicator licenses issued under this act. Such classifications may include<u>,</u> but are not limited to<u>,</u> commercial applicators, limited applicators, and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

(2) Commercial Applicators -- no individual shall act as a commercial applicator without first obtaining a commercial applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides in areas relevant to the operations he intends to undertake; and

(c) show proof of financial responsibility as prescribed by regulation; and

(d) an applicant must pay an annual license fee and registration fee for each piece of spraying equipment as prescribed by regulation; and

(e) an examination fee will be charged as prescribed by regulation and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(f) if at any time a licensed commercial applicator fails to maintain the financial responsibility required by paragraph (c) of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph (c) of this subsection.

(3) Commercial Operators -- no individual shall act as a commercial operator without first obtaining a commercial operator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides in areas relevant to the operations he intends to undertake; and

(c) an examination fee will be charged as prescribed by regulation and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(d) an applicant must pay an annual license fee as prescribed by regulation; and

(e) an applicant must be employed by a licensed commercial applicator.

(4) Limited Applicator -- no individual shall act as a limited applicator without first obtaining a limited applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to use, apply and handle pesticides in areas relevant to the operations he plans to undertake; and

(c) an examination fee will be charged as prescribed by regulation and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(d) an applicant must pay an annual license fee as prescribed by regulation.

(5) Private Applicator -- no individual shall act as a private

applicator without first fulfilling the licensing requirements prescribed by regulation.

(a) Application for a license shall be on a form prescribed by the department; and

(b) an applicant must be at least eighteen (18) years of age; and

(c) an applicant must pay a license fee as prescribed by regulation.

(6) If the director finds an applicant qualified for a commercial applicator's license, operator's license, limited applicator's license or private applicator's license; and if an applicant applying for a license to engage in the application of pesticides has met all of the requirements of any applicable federal or state laws and regulations, the director shall issue such license. The license or permit may restrict the applicant to the use of a certain type or types of equipment or pesticides. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(7) The director may by regulation require commercial or limited applicators to maintain and furnish records forthwith pertaining to the application of pesticides and other relevant information as he may deem necessary.

(8) License expiration:

(a) Licenses issued to commercial applicators, commercial operators, and limited applicators shall expire on December 31, following issuance unless it has been suspended or revoked as provided for in section 22-3409, Idaho Code; and

(b) licenses issued to private applicators shall expire as designated by the director unless suspended or revoked as provided for in section 22-3409, Idaho Code.

(9) Exemptions:

(a) The following individuals are exempt from subsections (2), (3), (4), (5) and (6) of this section:

1. Any farmer applying pesticides other than restricted-use pesticides restricted to use only by certified applicators for himself or on an exchange of service basis who does not publicly hold himself out as a commercial applicator; and

2. any individual using hand-powered equipment to apply pesticides other than restricted-use pesticides restricted to use only by certified applicators to lawns, or to ornamental trees and shrubs owned by such person or as an incidental part of his business of taking care of yards for remuneration and not holding himself out as a commercial applicator; and

3. any industry, governmental, University of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides restricted to use only by certified applicators to experimental plots or to demonstrate the use of pesticides and do not publicly hold themselves out as commercial applicators; and

4. any veterinarian who applies pesticides as an integral part of his business and does not publicly hold himself out as a commercial applicator.

(b) Federal, state, and ~~county~~ other governmental agencies are exempt from the licensing fees provision of subsections (2), ~~and~~

(3) and (4) of this section.

SECTION 3. That Section 22-3405, Idaho Code, be, and the same is hereby amended to read as follows:

22-3405. PEST CONTROL CONSULTANTS -- LICENSING REQUIREMENTS. No individual shall act as a pest control consultant after January 1, 1977, without first obtaining a pest control consultant's license.

(1) Application for a license shall be on a form prescribed by the department.

(2) Applicants must be at least eighteen (18) years of age and must demonstrate their knowledge of pesticide laws, regulations, pesticide hazards, and safety involving the distribution, use and disposal of pesticides by passing a written examination.

(3) An examination fee will be charged as prescribed by regulation and an additional examination fee of five dollars ($5.00) shall be charged when an examination is requested at other than a regularly scheduled examination date.

(4) The director may classify licenses to be issued under the provisions of this section. Each such classification may be subject to separate testing procedures and requirements.

(5) An applicant shall pay an annual licensing fee as prescribed by regulation.

(6) Licenses issued to pest control consultants shall expire on December 31 following issuance unless it has been suspended or revoked as provided for in section 22-3409, Idaho Code.

(7) Exemptions:

(a) A licensed limited applicator or commercial applicator is exempt from the licensing provisions of this section; and

(b) all federal, state, other governmental~~,~~ or University of Idaho research and extension research personnel are exempt from paragraphs (3) and (5) of this section; and

(c) any individual who recommends only the use of pesticides labeled for home and garden use only is exempt from the licensing provisions of this section.

SECTION 4. That Section 22-3406, Idaho Code, be, and the same is hereby amended to read as follows:

22-3406. PESTICIDE DEALERS. No individual shall act as a pesticide dealer without first obtaining a pesticide dealer's license issued by the department.

(1) Licensing:

(a) Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by regulation; and

(b) an applicant who sells restricted-use pesticides must pass the department's examination in order to demonstrate his knowledge of how to use and handle pesticides in areas relevant to the operation he intends to undertake; and

(c) such application shall be due on or before July 1 of each year; and

(d) a license shall be required for each location, outlet, or

warehouse from which such pesticides are distributed; and

(e) for an applicant selling restricted-use pesticides an examination fee will be charged as prescribed by regulation and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date.

(2) Records and Reports:

(a) Restricted-use pesticides or devices: The director shall require a pesticide dealer to keep accurate sale and distribution records as prescribed by regulation of restricted-use pesticides or devices;

(i) The director may also require a pesticide dealer to maintain other records and furnish reports for restricted-use pesticides or devices he determines necessary to implement the provisions of this act; and

(ii) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

(iii) The dealer shall be required to post total sales of each restricted-use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by regulation.

(b) General use pesticides: The director shall require a pesticide dealer to keep accurate sale and distribution records as prescribed by regulation of general use pesticides except those exempted in subsection (4) of this section.

(i) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

(ii) The dealer shall be required to report total sales of each general use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by regulation; and

(iii) The director may require dealers to furnish other reports of these records in the case of emergency as provided by regulation.

(3) Pesticide dealers shall sell restricted-use pesticides restricted to use only by certified applicators only to licensed commercial applicators, limited applicators, private applicators, and dealers.

(4) Exemptions:

(a) A manufacturer's representative or wholesale distributor shall be exempt from subsection (1) of this section provided such representative or distributor does not have a warehouse in Idaho that pesticides are sold, stored or distributed from; and

(b) federal, state and other governmental agencies are exempt from the examination and licensing fees of this section; and

(c) the director may exempt a pesticide from the provisions of subsection (1) or (2) of this section by regulation if it is determined that licensing or recordkeeping is not necessary for selling the pesticide.

(5) A user of a pesticide, without obtaining a pesticide dealer's license, may for the exclusive purpose of keeping it from becoming a waste, distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide.

SECTION 5. That Section 22-3420, Idaho Code, be, and the same is hereby amended to read as follows:

22-3420. PROHIBITED ACTS. No person shall:

(1) ~~As a licensed pesticide applicator or operator u~~Use a pesticide in a manner inconsistent with its labeling except as provided for by regulation.

(2) Make pesticide recommendations in a manner inconsistent with its labeling except as provided for by regulation.

(3) Make false or misleading claims through any media relating to the effect of pesticides or application methods to be utilized.

(4) Operate a faulty or unsafe pesticide spray apparatus, aircraft, or other application device or equipment.

(5) Apply ineffective or improper pesticides.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this act.

(7) Apply pesticides in a faulty, careless, or negligent manner.

(8) Refuse or neglect to keep and maintain records required by the provisions of this act, or to make reports when and as often as required.

(9) Distribute, sell or offer for sale any pesticide or device which is misbranded.

(10) Formulate, distribute, sell or offer for sale any pesticide which is adulterated.

(11) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken container.

(12) Refuse or neglect to comply with any limitations or restrictions placed on a license or permit issued under the provisions of this act.

(13) Refuse or neglect to comply with any other provisions of this act or regulation, or any lawful order of the director.

(14) Aid or abet a licensed or an unlicensed individual to evade the provisions of this act, conspire with such licensed or an unlicensed person to evade the provisions of this act, or allow one's license or permit to be used by another individual.

(15) Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.

(16) Impersonate any federal, state, county or city inspector or official.

(17) No person shall use or supervise the use of any restricted-use pesticide which is restricted to use by certified applicators, or any state restricted pesticide use which is restricted to use by certified applicators, without that individual's first complying with the licensing requirements pursuant to this act, and such other restrictions as had been determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator, individuals, or land, provided, that a competent indi-

vidual who is not a certified applicator but an employee of a licensed limited or private applicator may use a restricted-use pesticide or a state restricted-use pesticide under the direct supervision of the licensed limited or private applicator unless otherwise prescribed by the labeling of the pesticide.

Approved March 17, 1993.

CHAPTER 55
(H.B. No. 154, As Amended)

AN ACT

RELATING TO ANNEXATION BY CITIES; AMENDING SECTION 67-6526, IDAHO CODE, TO PROVIDE DATE CHANGES REGARDING AREAS OF CITY IMPACT; REPEALING SECTION 50-222, IDAHO CODE; AMENDING CHAPTER 2, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-222, IDAHO CODE, TO PROVIDE PROCEDURES FOR ANNEXATION OF TERRITORY BY CITIES; DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6526, Idaho Code, be, and the same is hereby amended to read as follows:

67-6526. AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE. (a) The governing board of each county and each city therein shall, prior to ~~July--1,-1977~~ October 1, 1994, adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. By mutual agreement, this date may be extended to ~~January 1,--1978~~ November 1, 1994. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted no later than ~~July--1,-1978~~ January 1, 1995. This separate ordinance shall provide for one of the following:

(1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or

(2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or

(3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact.

Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

(b) If the requirements of section 67-6526(a), Idaho Code, are not met, the county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance

requirements. The recommendations shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future.

(c) If areas of city impact overlap, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in section 67-6509, Idaho Code. If any city objects to the recommendation of the board of county commissioners, the county shall within sixty (60) days from the date of the recommendation conduct a special election and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the special election to the clerk of the involved cities.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of subsection (b) shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(e) Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by the governing board to make its recommendations to the governing board.

(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.

(~~f~~g) If the area of impact has been delimited pursuant to the provisions of subsection (a) (1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) per-

sons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and the zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code.

SECTION 2. That Section 50-222, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 2, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 50-222, Idaho Code, and to read as follows:

50-222. ANNEXATION OF ADJACENT TERRITORY. (1) On and after January 1, 1995, any land lying contiguous or adjacent to any city in the state of Idaho, or to any addition or extension thereof may be annexed by the city only if the land is lying in the area of city impact as determined by procedures contained in section 67-6526, Idaho Code, and the land is laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres. An owner of land of any size may request that the tract of land be annexed by the city whether the land is or is not contained in the city's area of impact by submitting such request in writing to the city council. If the tract of land is surrounded by or borders the city, the council may, by ordinance, declare the land by proper legal description thereof to be a part of such city. In any annexation of adjacent territory, the annexation shall include all portions of highways lying wholly or partially within the annexed area.

(2) Railroad right of way property may be annexed when property within the city adjoins both sides of the right of way notwithstanding any other provision of this section. Provided, that the city may annex only those areas which can be reasonably assumed to be used for orderly development of the city. Provided further, that said council shall not have the power to declare such land, lots or blocks a part of said city, if they will be connected to such city only by a shoestring or strip of land upon a public highway.

(3) Notwithstanding any other provision of law, no city council shall have authority to annex property owned by a county or any entity within the county which property is used as a fairgrounds area under the provisions of chapter 8, title 31, or chapter 2, title 22, Idaho Code, without the consent of a majority of the board of county commissioners of the county in which said property lies.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval. Sections 2 and 3 of this act shall be in full force and effect on and after January 1, 1995.

Approved March 17, 1993.

CHAPTER 56
(H.B. No. 192)

AN ACT

RELATING TO PUBLIC SCHOOL CHAUFFEURS; AMENDING SECTION 33-1509, IDAHO CODE, TO PROVIDE THAT CHAUFFEURS SHALL BE SUBJECT TO THE PHYSICAL EXAMINATION STANDARDS REQUIRED UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS, TO REQUIRE THAT CHAUFFEURS BE PHYSICALLY ABLE TO PERFORM ALL JOB-RELATED DUTIES, AND TO REQUIRE THAT CHAUFFEURS POSSESS THE CORRECT DRIVER'S LICENSE AND ENDORSEMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1509, Idaho Code, be, and the same is hereby amended to read as follows:

33-1509. CHAUFFEURS -- DEFINITION -- QUALIFICATION -- DUTIES. For the purpose of this chapter the term "chauffeur" shall mean any person who at any time is operating a school bus while transporting pupils to or from school, or to or from approved school activities.

A board of trustees shall employ chauffeurs only upon prior application in writing and the board shall require of chauffeurs employed by others who transport pupils of their district under contract, the same information required in such written application. Each application shall contain at least the minimum information specified by the state department of education.

Any person employed as a chauffeur shall be over the age of eighteen (18) years, be of good moral character and not addicted to the use of intoxicants or narcotics. Chauffeurs shall be subject to the physical examination standards of the federal motor carrier safety regulations. Before entering upon his duties ~~each year~~, each chauffeur shall file with the board of trustees a current health certificate~~, signed--not--longer--than--three--(3)-months-prior-to-such-filing-by-a licensed-physician,-and-in-form-approved-by-the--state--department--of education~~. Subsequent health certificates shall be filed with the frequency required by the federal motor carrier safety regulations. Chauffeurs shall be physically able to perform all job-related duties.

Each chauffeur shall at all times possess a valid and appropriate commercial driver's license, including endorsements as specified in section 49-105, Idaho Code, and a school bus driver's permit issued by the board of trustees. Such permit shall be in form approved by the state department of education and shall be carried on the chauffeur's person or be exhibited in full view when the holder thereof is operating any school bus with pupils therein.

The board of trustees may for cause, and after a hearing, revoke any school bus driver's permit.

Each chauffeur shall maintain such route books and other records as may be required by the state department of education or by the board of trustees of the school district. He shall report any pupil whose behavior is such as may endanger the operation of the vehicle, or who damages the same or any part thereof, or whose language is obscene.

It shall be the duty of each chauffeur to report any condition on, or bordering, his route which constitutes a hazard to the safety of the pupils being transported.

Approved March 17, 1993.

CHAPTER 57
(H.B. No. 311)

AN ACT

RELATING TO PROPRIETARY SCHOOLS; AMENDING SECTION 33-107, IDAHO CODE, TO CLARIFY APPLICATION OF THE SECTION TO PROPRIETARY SCHOOLS; REPEALING CHAPTER 24, TITLE 33, IDAHO CODE; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 24, TITLE 33, IDAHO CODE, RELATING TO PROPRIETARY SCHOOLS, TO DEFINE TERMS, TO SPECIFY THE APPLICATION OF THE CHAPTER AND TO EXEMPT CERTAIN SCHOOLS AND COURSES, TO DESIGNATE THE BOARD THE STATE POSTSECONDARY REVIEW ENTITY, TO REQUIRE REGISTRATION OF COURSES OFFERED FOR SALE, TO PROVIDE FOR AN AGENT'S PERMIT, TO PROVIDE FOR STATEMENTS UPON PURCHASE, TO REQUIRE A SURETY BOND, TO ESTABLISH THE STUDENT TUITION RECOVERY ACCOUNT AND SPECIFY CONDITIONS FOR RECOVERY FROM THE ACCOUNT, AND TO PROVIDE ASSESSMENTS AND ESTABLISH THE RATE OF ASSESSMENTS FOR THE STUDENT TUITION RECOVERY ACCOUNT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-107, Idaho Code, be, and the same is hereby amended to read as follows:

33-107. GENERAL POWERS AND DUTIES OF THE STATE BOARD. The state board shall have power to:

(1) perform all duties prescribed for it by the school laws of the state;

(2) acquire, hold and dispose of title, rights and interests in real and personal property;

(3) have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds;

(4) delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out the policies, orders and directives of the board;

(5) through its executive departments and offices;

(a) enforce the school laws of the state,

(b) study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation;

(6) in addition to the powers conferred by chapter 24, title 33, Idaho Code;

(a) maintain a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions which are: (1) located outside the state of Idaho and are offering courses or programs for academic credit or otherwise; or (2) located within the state of Idaho but not accredited by a regional or national accrediting agency recognized by the board and are offering courses or programs for academic credit~~;--and--to--critically--evaluate--each--of--the--components--of--such--offerings--by--comparison--with courses,--programs--and--faculty--of--postsecondary--institutions--under the--direction--and--control--of--the--state--board--of--education,--and based--on--the--evaluation,--each--course--or--program--shall--be--registered--as--comparable--or--not--comparable~~. The acceptance of academic credit is the prerogative of the state board of education; however, academic credit for courses ~~evaluated--as--not--comparable~~ and programs of institutions not accredited by a regional or national accrediting agency recognized by the board shall not be ~~accepted~~ awarded by Idaho postsecondary institutions under the direction and control of the state board,

(b) ~~establish--minimal--standards--for~~ require compliance by institutions which desire to offer courses or programs in Idaho with the standards and procedures established in chapter 24, title 33, Idaho Code,

(c) ~~establish--criteria--consistent--with--generally--accepted--professional--standards--relating--to--the--use--of--false--or--misleading--advertising,--solicitations--or--false--promises--of--employment,~~

~~(d)--provide--a--system--of--record--keeping--and--registration,~~

~~(e)~~ violation of the provisions of this act will be referred to the attorney general for appropriate action, including, but not limited to, injunctive relief.

(7) prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions;

(8) approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the courses or programs of study have been authorized by the board of trustees of the community college.

SECTION 2. That Chapter 24, Title 33, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 24, Title 33, Idaho Code, and to read as follows:

CHAPTER 24
PROPRIETARY SCHOOLS

33-2401. DEFINITIONS. For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) "Accredited" means that a school has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board or the United States department of education.

(2) "Agent" means any individual who solicits students for courses in Idaho.

(3) "Agent's permit" means a nontransferable written document issued to an agent by the board.

(4) "Board" means the state board of education.

(5) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(6) "Degree" means any academic, vocational or honorary title or designation, mark, appellation, series of letters, numbers or words such as, but not limited to, "bachelor's," "master's," "doctorate," or "fellow," which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition and an associate of arts or associate of science degree awarded by a community college or other institution which may be used for any purpose whatsoever.

(7) "Person" means any individual or other legal entity conducting courses.

(8) "Principal" means any person conducting courses.

(9) "Proprietary school" referred to as "school" means any postsecondary or vocational educational school operated for a profit, or on a nonprofit basis, which maintains a place of business within the state of Idaho or solicits business within the state of Idaho offering degrees, career or job training programs and which is not specifically exempted by the provisions of this chapter.

(10) "Registrant" means a person or principal who has been issued a certificate authorizing the conduct of courses.

(11) "Student" means an Idaho resident enrolled in a proprietary school.

33-2402. SCHOOLS AND COURSES EXEMPTED. The following schools or courses are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school":

(1) A school, educational institution or agency supported primarily by taxation from either a state or local source.

(2) Courses offering instruction or training solely avocational or recreational in nature, as determined by the board.

(3) Courses recognized by the board which comply in whole or in part with the compulsory education law.

(4) Courses offered by an educational institution accredited by a national or regional accrediting agency recognized by the board or the United States department of education.

(5) A course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no

tuition fee is charged to the student.

(6) A school or course which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code.

(7) Aviation school or instructors approved by and under the supervision of the federal aviation administration.

(8) Intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests.

(9) Entities not otherwise exempt offering only workshops or seminars lasting no longer than three (3) calendar days.

(10) Courses offered by a parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

33-2403. FEDERAL REQUIREMENTS -- STATE POSTSECONDARY REVIEW. To protect the interest of students and the federal accounts that support them, the board shall be designated as the state postsecondary review entity. The board shall develop rules which provide for standards and shall conduct or coordinate reviews of proprietary schools that enroll students participating in title IV of the higher education act of 1965 and its amendments.

33-2404. REGISTRATION. No person or principal, whether operating from within or without the state of Idaho, shall sell, offer for sale, or distribute, or cause to be sold, offered for sale, or distributed, any course or courses in this state unless such person shall be registered with, and hold a valid certificate of registration issued by the board. Any such registration and certificate of registration shall expire on the thirtieth day of June of each year.

33-2405. AGENT'S PERMIT. No individual may act as an agent unless that individual holds a valid permit issued by the board and maintains at all times a surety bond as described in section 33-2407, Idaho Code.

The application for a permit shall be furnished by the board and shall include the following:

(1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules promulgated pursuant thereto.

(2) An annual fee of twenty-five dollars ($25.00) for each permit.

All permits shall be renewed annually upon reapplication and proper qualifications on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate permit is required for each agent.

The permit shall consist of a pocket card and shall bear the name and address of the agent, the name and address of the principal, and a statement that the bearer is an authorized agent of the principal, and may solicit and sell courses for the principal. The agent shall surrender the permit to the principal upon termination of employment.

An agent representing more than one (1) institution shall obtain a separate agent's permit for each institution represented.

No individual shall be issued a permit if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

A permit shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended by the board for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, or for the existence of any condition in respect to the agent or the school he or she represents, which if in existence at the time the permit was issued, would have been grounds for denial for the permit.

The agent shall carry the permit with him or her for identification purposes when engaged in the solicitation for the sale and the selling of courses of study away from the premises of the school, and shall produce the permit for inspection upon request.

The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of a permit or proceeding to revoke or suspend a permit of the board conducted pursuant to this section.

The issuance of a permit pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any permit to expressly or impliedly represent by any means whatever, that the board has made any evaluation, recognition, accreditation or endorsement of any course of study being offered for sale by the agent or school. Any oral or written statement, advertisement or solicitation by any principal or agent which refers to the board shall state:

"(Name of school) is registered with the State Board of Education in accordance with Section 33-2404, Idaho Code."

It shall be unlawful for any agent holding a permit under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the permit constitutes an assurance by the board that any course of study being offered for sale by the individual or school will provide and require of the student a course of education or training necessary to reach a professional, education, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or school.

No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair.

The board shall maintain records for five (5) years of each application for permit, each bond, and each issuance, denial, termination, suspension and revocation of a permit.

The board or a student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney fees and costs both at trial and on appeal.

Additionally, any principal or agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine

not exceeding five thousand dollars ($5,000), or both.

33-2406. PURCHASE STATEMENT. At the time of depositing any moneys to purchase the product of any proprietary school, the school shall require the student to execute the following statement on an appropriate form which shall be maintained on record by the proprietary school in the individual student's file:

"I understand that (Name of Institution) is registered with the State Board of Education in accordance with Section 33-2404, Idaho Code. I also understand that the State Board of Education has not accredited or endorsed any course of study being offered by (Name of Institution)."

33-2407. SURETY BOND. A surety bond issued by an insurer duly authorized to do business in this state in favor of the state of Idaho for the indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter shall be required of an agent. The term of the bond shall extend over the period of the permit. The bond shall be supplied by the school.

The bond shall provide for liability in the penal sum of one hundred thousand dollars ($100,000) for those schools with one hundred (100) or more students; fifty thousand dollars ($50,000) for those schools with fifty (50) to ninety-nine (99) students; twenty-five thousand dollars ($25,000) for those schools with less than fifty (50) students. Notwithstanding the above, for those schools that submit evidence acceptable to the board that the total unearned tuition of the school will not exceed ten thousand dollars ($10,000) at any given time during the period of registration, a bond in the penal sum of ten thousand dollars ($10,000) may be provided, regardless of the number of students.

The board may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the board, and contemporaneously surrendering all agents' permits.

Each school shall certify, at the time of registration, the number of students presently enrolled at the school and shall make available, upon request of the board, proof of enrollment numbers.

33-2408. STUDENT TUITION RECOVERY ACCOUNT -- CONDITIONS FOR RECOVERY. (1) There is hereby created in the state treasury the student tuition recovery account to be administered by the board for the purpose of relieving or mitigating pecuniary losses suffered by any Idaho resident who is a student of a school registered under the provisions of this chapter and who meets either of the following condi-

tions:

(a) The student was enrolled in a school prior to the school's closure, had prepaid tuition, and suffered loss as a result of:

(i) The closure of the school; or

(ii) The school's breach or anticipatory breach of the agreement for the course of study.

For the purpose of this section, "closure" includes closure of a branch or satellite campus, the termination of either the correspondence or residence portion of a home study or correspondence course, and the termination of a course of study for some or all of the students enrolled in the course before the time the students have satisfactorily completed the program, or before a student who has been continuously enrolled in a course of study had been permitted to complete all the educational services and classes that comprise the course.

(b) The student obtained a judgment against the institution for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, and the student certifies that the judgment cannot be collected after diligent collection efforts.

(2) Payments from the account to any student shall be subject to rules and conditions as the board shall prescribe.

(a) The school shall provide to the board at the time of the school's closure the names and addresses of persons who were students of the school within sixty (60) days prior to its closure, and shall notify these students within thirty (30) days prior to the school's closure, of their rights under the student tuition recovery account and how to apply for payment.

(b) If the school fails to comply with the provisions of this section, the board shall attempt to obtain the names and addresses of these students and shall notify them, within ninety (90) days of the school's closure, of their rights under the student tuition recovery account and how to apply for payment. The board may require the school to reimburse the board for all reasonable costs and expenses incurred in notifying students.

(c) The board shall develop a form fully explaining a student's rights, which shall be used by the school or the board to comply with the notice requirement. The form shall include or be accompanied by a claim application form and an explanation of how to complete the application.

(d) Students filing for payment from the student tuition account as a result of the closure of a school must submit the claim within one (1) year from the school's or board's service of notice on the student or within two (2) years of the closure of the school, whichever is earlier.

(3) Students entitled to payment shall file with the state board of education a verified application including, but not limited to each of the following:

(a) The student's name, address, telephone number and social security number.

(b) If any portion of the tuition was paid from the proceeds of a loan, the name of the lender and any state or federal agency that guaranteed the loan.

(c) The amount of the prepaid tuition.

(d) The dates the student started and ceased attending the

school.

(e) A description of the reasons the student ceased attending the school.

(f) If the student ceased attending because of a breach or anticipatory breach, a statement describing in detail the nature of the economic loss incurred.

(4) Students entitled to payment based on a judgment shall file with the board a verified application indicating the student's name, address, telephone number and social security number, the amount of the judgment obtained against the school, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a certified copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment. The application shall be filed with the board within two (2) years after the date upon which the judgment became final.

(5) If the board pays the claim, the amount of the payment shall be the total amount of the student's economic loss, although the amount of the payment shall in no event exceed the amount of the student's tuition and cost of equipment and materials related to the course of study plus interest on all student loans used to pay tuition, equipment and materials. Upon payment of the claim, the board shall be subrogated to all of the student's rights against the school to the extent of the amount of the payment. If the board receives several claims from students, the payment of which cannot be totally covered by the student tuition recovery account, the claims shall receive a prorata share of the account.

(6) If the board denies a claim, the board shall notify the student of the denial and of the student's right to request a hearing within thirty (30) days. The hearing shall be held pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code. If a hearing is not requested the board's decision shall be final.

(7) It is the intent of the legislature that, when a student is enrolled in a school that closes prior to the completion of the student's program, the student shall have the option for a teach-out at another school with a comparable course of study. The board shall seek to promote teach-out opportunities whenever possible, with the student to be informed by the board that he or she has the option of either payment from the account or a teach-out which shall be funded from the account.

(8) No liability accrues to the state of Idaho from claims made against the student tuition recovery account.

33-2409. ASSESSMENT FOR STUDENT TUITION RECOVERY ACCOUNT. The board shall assess each registered school which collects any moneys in advance of rendering services, an amount equal to one-tenth of one percent (.1%) of the total course cost for each student enrolled. The assessment per student shall not be less than one dollar ($1.00), and not more than four dollars ($4.00). In addition, for each student who prepays an institution an amount in excess of four thousand dollars ($4,000), the board shall assess the school one-half of one percent (.5%) of the prepaid amount which exceeds four thousand dollars ($4,000). The board shall promulgate rules regarding collection and

administration of the student tuition account.

At any time that the balance is in excess of fifty thousand dollars ($50,000), the board shall suspend collection, except as provided in the event of a newly registered school or the transfer of ownership of a school as provided in this section, until such time as the balance is again below fifty thousand dollars ($50,000).

Newly registered schools shall, regardless of the balance in the account, contribute the assessment set forth in this section for two (2) years.

If fifty-one percent (51%) or more of the ownership interest in a school is conveyed through sale or other means into different ownership, the new owner shall commence contributions under the provisions applying to a new applicant.

No more than ten percent (10%) per fiscal year shall be used for the administration of the tuition recovery program. The interest earned on money in the account shall be credited to the account.

In the event of a closure of a school registered under the provisions of this chapter, any assessments which have been made against those schools, but have not been paid into the account, shall be recovered to the extent feasible, or any payments from the student tuition recovery account made to students on behalf of any school may be recovered from that school by appropriate action taken by the board. The moneys so deposited in the student tuition recovery account shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those schools or students.

Approved March 17, 1993.

CHAPTER 58
(H.B. No. 353)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 210, LAWS OF 1992 FOR THE FISCAL YEAR 1993; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 210, Laws of 1992, there is hereby appropriated to the Department of Parks and Recreation the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1992, through June 30, 1993:

	FOR OPERATING EXPENDITURES	FOR TRUSTEE/BENEFIT PAYMENTS	TOTAL
PARK OPERATIONS:			
FROM:			
Parks and Recreation Expendable Trust Fund	$275,000		$275,000
Federal Grant Fund	40,000		40,000
TOTAL	$315,000		$315,000
RECREATION RESOURCES:			
FROM:			
Parks and Recreation Registration Fund		$250,000	$250,000
Recreational Fuels Fund		50,000	50,000
TOTAL		$300,000	$300,000
LAVA HOT SPRINGS FOUNDATION:			
FROM:			
Public Recreation Fund	$ 40,000		$ 40,000
GRAND TOTAL	$355,000	$300,000	$655,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 59
(H.B. No. 358)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE HUMAN RIGHTS COMMISSION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 294, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 294, Laws of 1992, there is hereby appropriated to the Office of the Governor for the Human Rights Commission, the following amounts, to be expended according to the designated expense class from the listed fund for the period July 1, 1992, through June 30, 1993:

FOR:	
Operating Expenditures	$6,000
FROM:	
Miscellaneous Revenue	$6,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 60
(H.B. No. 359)

AN ACT

APPROPRIATING MONEYS TO THE SECRETARY OF STATE IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 301, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 301, Laws of 1992, there is hereby appropriated to the Secretary of State, the following amount to be expended for the designated program according to designated expense classes from the listed fund for the period July 1, 1992, through June 30, 1993:

D. IDAHO COMMISSION ON THE ARTS:

FOR:	
Personnel Costs	$15,000
Operating Expenditures	$15,000
FROM:	
General Fund	$30,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 61
(H.B. No. 366)

AN ACT

APPROPRIATING MONEYS TO THE HISPANIC COMMISSION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 1, CHAPTER 127, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 1, Chapter 127, Laws of 1992, there is hereby appropriated to the Hispanic Commission in the Department of Self-governing Agencies the following amounts, to be expended from the listed fund according to designated expense classes during the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$2,100	$1,600	$3,700

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 62
(H.B. No. 367)

AN ACT
APPROPRIATING MONEYS FOR THE VOCATIONAL EDUCATION DISPLACED HOMEMAKER PROGRAM IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 304, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 304, Laws of 1992, there is hereby appropriated to the State Board of Education for Vocational Education the following amount to be expended for the Displace Homemaker Program from the listed fund according to the designated expense class for the period July 1, 1992, through June 30, 1993:

FOR:	
Trustee and Benefit Payments	$46,500
FROM:	
Displaced Homemaker Fund	$46,500

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 63
(H.B. No. 370)

AN ACT
APPROPRIATING MONEYS FOR THE DIVISION OF VOCATIONAL REHABILITATION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 204, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 204, Laws of 1992, there is hereby appropriated to the State Board of Education for the Division of Vocational Rehabilitation the following amounts to be expended for the Vocational Rehabilitation Program from the listed fund sources according to designated expense classes for the period July 1, 1992, through June 30, 1993:

FOR:	
Personnel Costs	$119,100
Trustee and Benefit Payments	59,900
TOTAL	$179,000
FROM:	
Rehabilitation Revenue and Refunds Fund	$ 48,000
Federal Grants Fund	131,000
TOTAL	$179,000

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1993.

CHAPTER 64
(S.B. No. 1029)

AN ACT

RELATING TO SCHOOL ELECTIONS; AMENDING SECTION 33-428, IDAHO CODE, TO PROVIDE THAT SPONSORS OF A RECALL PETITION SHALL FILE PETITIONS WITH THE SCHOOL BOARD CLERK NOT LESS THAN SIX MONTHS BEFORE THE NEXT REGULAR ELECTION IN WHICH THE TRUSTEE WHOSE RECALL IS PETITIONED IS SUBJECT TO REELECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-428, Idaho Code, be, and the same is hereby amended to read as follows:

33-428. FILING PETITIONS -- TIME LIMITATIONS. The sponsors of a recall demanded of any school trustee shall stop circulation and file all petitions with the appropriate school board clerk not less than six (6) months before the next regular election in which ~~any~~ the school trustee whose recall is petitioned is subject to reelection.

Approved March 17, 1993.

CHAPTER 65
(H.B. No. 26)

AN ACT

RELATING TO THE COUNSELOR LICENSING BOARD; AMENDING SECTION 54-3404, IDAHO CODE, AS AMENDED BY SECTION 82, CHAPTER 213, LAWS OF 1990, TO PROVIDE FOR COUNSELOR SPECIALTY STANDARDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-3404, Idaho Code, as amended by Sec-

tion 82, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

54-3404. COUNSELOR LICENSING BOARD -- POWERS. The board shall have the following powers:

(1) To regulate the practice of licensed counselors and licensed professional counselors in the state of Idaho.

(2) To pass upon the qualifications and fitness of applicants for licenses.

(3) To adopt and from time to time revise such rules and regulations as may be necessary to carry into effect the provisions of this chapter. Such rules and regulations shall include, but not be limited to, the American Personnel and Guidance Association code of ethics for licensed counselors in the state and shall be adopted in compliance with chapter 52, title 67, Idaho Code.

(4) To review the practice of counselors licensed under this chapter and charged with a violation of the provisions of this chapter. This review may include the notes of the counselor and other materials related to the practice. The review will remain subject to disclosure according to chapter 3, title 9, Idaho Code, unless the written consent of the client is received by the board.

(5) To establish a peer review system whereby each licensed counselor's practice may be reviewed to ensure continuing practice in an appropriate and ethical manner.

(6) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of counselor applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(7) To conduct hearings to suspend or revoke licenses for violations of the law and rules and regulations adopted pursuant to this chapter and cause the prosecution and enjoinder of all such violations.

(8) In any proceeding before the board authorized by this chapter, the board or its designee may administer oaths or affirmations to witnesses appearing before it.

(9) To authorize, by written agreement, the chief of the bureau of occupational licenses as agent to act in its interest.

(10) To provide, by rule, licensed professional counselor specialty standards.

Approved March 17, 1993.

CHAPTER 66
(H.B. No. 136)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; APPROVING THE COMPREHENSIVE STATE WATER PLAN FOR THE HENRYS FORK BASIN AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON DECEMBER 3, 1992.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That pursuant to Section 42-1734B(6), Idaho Code, the Comprehensive State Water Plan for the Henrys Fork Basin, adopted by resolution of the Idaho Water Resource Board on December 3, 1992, be, and the same is hereby approved.

SECTION 2. The following stream reaches of the Henrys Fork of the Snake River and its tributaries are designated as protected rivers with the associated prohibited activities as set forth in the plan:

1. Targhee Creek, including West and East Forks: from source to National Forest boundary (12.5 miles) - Natural

Targhee Creek, including West and East Forks, from sources to the Targhee National Forest boundary (Forest Route 057 bridge) is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

2. Henrys Fork: Big Springs to Island Park Reservoir (11 miles) and the lower two miles of Henrys Lake Outlet - Recreational

The Henrys Fork from Big Springs to Island Park Reservoir (McCrae Bridge) is designated a state recreational river. Also designated a state recreational river is the last two miles of Henrys Lake Outlet (also known as the Henrys Fork) starting at the beginning of the Forest Service land between Sections 29 and 30 near the Forest Boundary and ending at the mouth in Section 32, all in T. 14 N., R. 44 E. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations shall be prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new diversion works; and for public agencies to construct public access facilities and fishery enhancement facilities. In addition, new private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to pump installations which do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

3. Henrys Fork: Island Park Dam to Riverside Campground (16 miles) - Recreational

The Henrys Fork from the downstream right-of-way line of the U.S. Bureau of Reclamation Island Park Dam to the section line between Sections 24 and 25, T. 11 N., R. 42 E., located approximately one-fourth mile below Riverside Campground, is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities

are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations shall be prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new diversion works; and for public agencies to construct fishery enhancement facilities and public access facilities. In addition, new private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to pump installations which do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

4. Golden Lake, Silver Lake and Thurman Creek from Golden Lake to mouth (4 miles) - Recreational

Golden Lake, Silver Lake and Thurman Creek from Golden Lake to its confluence with the Henrys Fork, all mostly within Harriman State Park, are designated state recreational rivers (waterways). Waterways can include lakes. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations shall be prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, impoundments, fish and wildlife enhancement facilities and public stream access facilities and for public agencies to construct public access facilities, and fish and wildlife enhancement facilities.

5. Henrys Fork: Riverside Campground to Hatchery Ford (4 miles) - Natural

The Henrys Fork from the section line between Section 24 and 25, T. 11 N., R. 42 E., located approximately one-fourth mile below Riverside Campground to a point 100 feet upstream of the Forest Service boat ramp at Hatchery Ford is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

6. Henrys Fork: 100 feet upstream of the Hatchery Ford boat ramp to a point 300 feet downstream of the ramp (approximately 400 feet) - Recreational

The Henrys Fork from a point 100 feet upstream of the Forest Service boat ramp to a point approximately 300 feet downstream of the ramp, is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining;

and mineral or sand and gravel extraction within the streambed.

7. Henrys Fork: Hatchery Ford boat ramp to National Forest Boundary near Warm River (13 miles) - Natural

The Henrys Fork from a point 300 feet downstream of the Hatchery Ford boat ramp to the southern boundary of the Targhee National Forest near the mouth of Warm River is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

8. Henrys Fork: Forest Boundary near Warm River to Ashton Reservoir (8 miles) - Recreational

The Henrys Fork from the southern boundary of the Targhee National Forest near Warm River to the U.S. Highway 20 bridge near the upstream limit of Ashton Reservoir is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction of expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new water diversion works; and for public agencies to construct public access facilities and fishery enhancement facilities. In addition, new private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to installations which have the main riverbed structure located below the water level and blended with the riverbed or to pumping installations which do not create an obstruction in the river, and are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

9. Henrys Fork: Ashton Dam to Falls River (6 miles) - Recreational

The Henrys Fork from the south property line of the Utah Power and Light Co. Ashton Dam property to the confluence with the Falls River is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alteration is prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new water diversion works; and for public agencies to construct public access facilities and fishery enhancement facilities. In addition, new private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to pump installations which

do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

10. Buffalo River (8 miles) and Elk Creek (1 mile) - Recreational

The Buffalo River from the springs (in the SW 1/4 of Sec. 21, T. 13 N., R. 44 E.) to its confluence with the Henrys Fork and Elk Creek from below the right-of-way line of Elk Creek Dam to its confluence with the Buffalo River are designated state recreational rivers. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

The construction of hydropower projects is prohibited except for the rebuilding of the Ponds Lodge hydropower facility.

Stream channel alterations are prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; and for public agencies to construct public access facilities including bridges and fishery enhancement facilities; and for new diversion works including those associated with the rebuilding and upgrading of the Ponds Lodge hydroelectric project providing the conditions of the stream channel permit process are met.

Construction or expansion of dams or impoundments are prohibited unless associated with the rebuilding and upgrading, including a raise in the water level, of the Ponds Lodge project.

New diversion works shall be limited to pump installations which do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

11. Warm River: Partridge Creek to the Forest Route 153 bridge (approximately 1/4 mile) - Natural

The Warm River from its confluence with Partridge Creek downstream to a point 100 feet upstream of the Forest Route 153 bridge is designated a state natural river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

12. Warm River: Forest Route 153 bridge area (approximately 200 feet) - Recreational

The Warm River from a point 100 feet upstream of the Forest Route 153 bridge (in the NW 1/4 of Sec. 20, T. 44 E., R. 11 N., B.M.) to a point 100 feet downstream of the bridge is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following

activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to maintain, improve, or replace the bridge.

13. Warm River: Forest Route 153 bridge to Forest Route 154 bridge (7 miles) - Natural

The Warm River from a point 100 feet downstream of the Forest Route 153 bridge to a point 100 feet upstream of the Forest Route 154 bridge is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

14. Warm River: Forest Route 154 bridge area (approximately 200 feet) - Recreational

The Warm River from a point 100 feet upstream of the Forest Route 154 bridge (in the SW 1/4 of Sec. 10, T. 44 E., R. 44 E., B.M.) to a point 100 feet downstream of the bridge is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to maintain, improve, or replace the bridge.

15. Warm River: Forest Route 154 bridge to Warm River Campground (7 miles) - Natural

The Warm River from a point 100 feet downstream of the Forest Route 154 bridge to a point 100 feet upstream of the bridge near the upstream edge of Warm River Campground (in the SW 1/4 of Sec. 7, T. 9 N., R. 44 E., B.M.) is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

16. Robinson Creek: from Yellowstone Park boundary to Forest Route 241 bridge (10 miles) - Natural

Robinson Creek from the Yellowstone National Park boundary to a point 100 feet upstream of the Forest Route 241 bridge is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

17. Robinson Creek: Forest Route 241 bridge to mouth (4 miles) - Recreational

Robinson Creek from a point 100 feet upstream of Forest Route 241 bridge to its confluence with Warm River is designated a state recre-

ational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to repair or replace existing bridges.

18. Rock Creek: from Yellowstone Park boundary to mouth (9 miles) - Recreational

Rock Creek from the Yellowstone National Park boundary to its confluence with Robinson Creek is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to repair or replace existing bridges.

19. Falls River: Idaho border to a point 100 feet upstream of the Yellowstone Diversion Dam (7 miles) - Natural

The Falls River from the Idaho border to a point 100 feet upstream of the upstream right-of-way boundary of the Yellowstone Diversion Dam, is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

20. Falls River: from 100 feet upstream of the Yellowstone Diversion Dam to Kirkham Bridge (11 miles) - Recreational

The Falls River from a point 100 feet upstream of the upstream right-of-way boundary of Yellowstone Diversion Dam to the Kirkham Bridge, located in Sections 2 and 3 along the northern boundary of T. 8 N., R. 43 E., is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

The construction of water diversion works is prohibited except for those associated with off-stream storage projects. The Water Resource Board cannot support any project at this time since feasibility studies are not available for consideration. The existing water-right process provides opportunity for the public and the Water Resource Board to be involved in the approval of any potential project.

Stream channel alterations are prohibited except those necessary to maintain, improve, or relocate existing utilities, roadways, diversion works, fishery enhancement facilities and, managed stream access facilities; for the maintenance of private property; for new off-stream storage projects; and for public agencies to construct public access facilities and fishery enhancement facilities.

The Falls River (FERC #9885) hydropower project will use the existing Marysville Canal diversion. This project has received a FERC license, and as such is considered a vested right by the Water

Resource Board. The prohibitions associated with this state protected river designation, therefore, do not apply to this project.

21. Boone Creek: Idaho border to mouth (4 miles) - Natural

Boone Creek from the Idaho border to its confluence with Falls River is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

22. Conant Creek: Idaho border to National Forest boundary (6 miles) - Natural

Conant Creek from the Idaho border to the Targhee National Forest boundary is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

23. Conant Creek: National Forest boundary to Conant Creek diversion structure (3 miles) - Recreational

Conant Creek from the Idaho border to the Targhee National Forest boundary is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to maintain diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new diversion works; and for public agencies to construct public access facilities and fishery enhancement facilities. New private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to pump installations which do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

24. Teton River: Trail Creek to Highway 33 (14 miles) - Recreational

The Teton River from its confluence with Trail Creek to the Highway 33 bridge is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations shall be prohibited except those necessary to maintain and improve existing utilities, roadways, diversion

works, impoundments, fish and wildlife enhancement facilities and public stream access facilities, and for public agencies to construct public access facilities and fish and wildlife enhancement facilities.

25. Teton River: Highway 33 to Felt Dam (11 miles) - Recreational

The Teton River from the Highway 33 bridge to Felt Dam is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

The construction of hydropower projects is prohibited except for the Upper Teton Project (FERC #10613), located in Sec. 3, T. 6 N., R. 44 E. The Water Resource Board has reviewed this proposed project and feels that the minimum streamflow that exists will provide sufficient protection to the river in the project area.

The construction of water diversion works is prohibited except for those associated with off-stream storage projects. The Water Resource Board cannot support any project at this time since feasibility studies are not available for consideration. The existing water-right process provides opportunity for the public and the Water Resource Board to be involved in the approval of any potential project.

Stream channel alterations are prohibited except those necessary to maintain and improve existing utilities, roadways, diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new off-stream storage projects; and for public agencies to construct public access facilities and fishery enhancement facilities.

26. Teton Creek: from the springs near Highway 33 to mouth (3 miles) - Recreational

Teton Creek from the springs near Highway 33 to its confluence with the Teton River is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to maintain diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new diversion works; and for public agencies to construct public access facilities and fishery enhancement facilities. New private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to pump installations which do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

27. Fox Creek: from the springs to mouth (2.5 miles) - Recreational

Fox Creek from the springs for approximately 2.5 miles to its confluence with the Teton River is designated a state recreational river.

Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

Stream channel alterations are prohibited except those necessary to maintain diversion works, fishery enhancement facilities and managed stream access facilities; for the maintenance of private property; for new diversion works; and for public agencies to construct public access facilities and fishery enhancement facilities. New private stream access facilities may be allowed with Idaho Water Resource Board approval.

New diversion works shall be limited to pump installations which do not create an obstruction in the river; are visually blended with the surroundings so as to be less noticeable from the river; are provided with fish screens if appropriate; are to supply water for livestock, domestic, commercial or municipal uses; are sized to supply water at a rate not to exceed 0.5 cubic feet per second; and which receive the aesthetic and fish screen design approval of the Idaho Department of Water Resources.

28. Badger Creek: from the springs to mouth (3 miles) - Recreational

Badger Creek from the springs in the canyon for approximately three miles to its confluence with the Teton River is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction or hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

29. Bitch Creek: Idaho Border to the railroad trestle (5 miles) - Natural

Bitch Creek from the Idaho border to the railroad trestle in the NW 1/4 of Sec. 9, T. 7 N., R. 45 E. is designated a state natural river. Pursuant to Idaho Code 42-1734A(5), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

30. Bitch Creek: Railroad trestle to Highway 32 (2 miles) - Recreational

Bitch Creek from the railroad trestle in the NW 1/4 of Sec. 9, T. 7 N., R. 45 E. to the Highway 32 bridge, located in the NW 1/4 of Sec. 17, T. 7 N., R. 45 E., is designated a state recreational river. Pursuant to Idaho Code 42-1734A(6), the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; and mineral or sand and gravel extraction within the streambed.

31. Bitch Creek: Highway 32 to mouth (7.5 miles) - Natural

Bitch Creek from the Highway 32 bridge to its confluence with the Teton River is designated a state natural river. If Teton Dam is rebuilt to its original height, this designation shall terminate at the backwaters of the reservoir. Pursuant to Idaho Code 42-1734A(5),

the following activities are prohibited: construction or expansion of dams or impoundments; construction of hydropower projects; construction of water diversion works; dredge or placer mining; alterations of the streambed; and mineral or sand and gravel extraction within the streambed.

Approved March 17, 1993.

CHAPTER 67
(H.B. No. 137)

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING SECTION 67-5309, IDAHO CODE, TO ADD AN ALTERNATIVE HIRING AND EXAMINATION PROCEDURE FOR PERSONS WITH DISABILITIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5309, Idaho Code, be, and the same is hereby amended to read as follows:

67-5309. RULES OF THE PERSONNEL COMMISSION. The commission shall have the power and authority to adopt, amend, or rescind such rules and regulations as may be necessary for proper administration of this act. Such rules shall include:

(a) A rule requiring the personnel commission, after consulting with each department to develop, adopt, and make effective, a classification plan for positions covered by this act, based upon an analysis of the duties and responsibilities of the position. The classification plan will include an appropriate title for each class, and a description of duties and responsibilities of positions in the classes and requirements of minimum training, experience and other qualifications, suitable for the performance of duties of the position.

(b) A rule requiring the personnel commission, after consulting with each department to develop, and adopt a comprehensive compensation plan for all classes of positions covered under this act. The compensation plan shall include salary schedules with the salary of each position consistent with the responsibility and difficulty of the work as outlined in the job specifications.

(c) A rule requiring that all classes of positions which are common to the departments concerned shall have the same titles, minimum requirements and compensation.

(d) A rule providing for not less than biennial review by the commission of the personnel system including classification and compensation plans, policies and procedures.

(e) A rule that, notwithstanding the procedure for examination and ranking of eligibles on a register provided in subsection (f) of this section, an agency may appoint an individual directly into an entrance or promotional probation if the division of vocational rehabilitation, Idaho commission for the blind or the industrial commission certifies, with the concurrence of personnel commission staff,

that the individual (1) has a disability or handicap as defined under state or federal law; (2) is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3) lacks competitiveness in the examination process due to the disability or handicap. The probationary period as provided in subsection (j) of this section shall be the sole examination for such individuals.

(f) A rule requiring fair and impartial selection of appointees to all positions other than those defined as nonclassified in this act, on the basis of open competitive merit examinations. An application for an examination will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing hospitalization of no more than one (1) year following discharge, during any period in which the examination was open; the application must be submitted within one hundred twenty (120) days of separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of the examination. A disabled veteran may file an application at any time for any position for which the commission maintains a register or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. Examinations may be assembled or unassembled and may include various examining techniques such as rating of training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measure of ability to perform the duties of the position. Examinations shall be scored objectively. Five (5) points shall be added to the earned rating of any war veteran and the widow of any war veteran as long as she remains unmarried. Ten (10) points shall be added to the earned rating of any disabled war veteran, the widow of any disabled war veteran as long as she remains unmarried or the spouse of any disabled veteran who is physically unable to perform the work in the position to which the spouse seeks to apply the preference. Employment registers shall be established in order of final score except that the names of all five (5) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating, and the names of all ten (10) point preference eligibles shall be placed at the top of the register above the names of all nonpreference eligibles. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the five (5) top ranking available eligibles plus the names of all individuals with scores identical to the fifth ranking eligible on the register; however, selective certification shall be permitted when justified by the hiring department, under rules to be made by the commission defining adequate justification based on the duties and requirements of the positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one (1) year after departments commence participation in the personnel system.

(fg) A rule that, whenever practicable, a vacancy in a classified

position shall be filled by the promotion of a qualified permanent employee of the agency in which the vacancy occurs. An inter-agency promotion shall be made through competitive examination and all qualified state employees shall have the opportunity to compete for such promotions. If an employee's name appears within certifiable range on a current register for a higher class of position, he shall be eligible for a transfer and promotion.

(~~h~~g) A rule for development and maintenance of a system of service ratings and the use of such ratings by all departments in connection with promotions, demotions, retentions, separations and reassignments. The rule shall require that an evaluation of each classified employee shall be made after each two thousand eighty (2,080) hour period of credited state service, and that a copy of the evaluation shall be filed with the commission.

(~~i~~h) A rule prohibiting disqualification of any person from taking an examination, from appointment to a position, from promotion, or from holding a position because of race or national origin, color, sex, age, political or religious opinions or affiliations, or other nonmerit factors, and providing for right of appeal.

(~~j~~i) A rule establishing a probation period not to exceed six (6) months for all appointments and promotions, except that peace officers as defined in section 19-5101, Idaho Code, shall be subject to a probation period of one (1) year, and for the appointing authority to provide the employee and the commission a performance evaluation indicating satisfactory or unsatisfactory performance not later than thirty (30) days after the expiration of the probationary period. The rule shall provide that if the appointing authority fails to provide a performance evaluation within thirty (30) days after the expiration of the probationary period, the employee shall be deemed to have satisfactorily completed the probation unless the appointing authority receives approval from the state personnel director to extend the probationary period for good cause for an additional specified period not to exceed six (6) months. If an employee is performing in an unsatisfactory manner during the entrance probationary period, the appointing authority shall ask the employee to resign, and if no resignation is submitted, shall terminate the employment of such employee without the right of grievance or appeal.

(~~k~~j) A rule concerning provisional appointments.

(~~l~~k) A rule concerning temporary appointments.

(~~m~~l) A rule governing the employment of consultants and persons retained under independent contract.

(~~n~~m) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:

1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, rules and regulations of the employee's department, or rules and regulations of the personnel commission.

2. Inefficiency, incompetency, or negligence in the performance of duties.

3. Physical or mental incapability for performing assigned

duties.

4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.

5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.

6. Intoxication on duty.

7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.

8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.

9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.

10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.

11. Habitual pattern of failure to report for duty at the assigned place and time.

12. Habitual improper use of sick leave privileges.

13. Unauthorized disclosure of confidential information from official records.

14. Absence without leave.

15. Misstatement or deception in the application for the position.

16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.

17. Prohibited participation in political activities.

(~~n~~o) A rule to establish procedures for maintenance of a record of the employment history and appropriate information relating to performance of all employees under the personnel system.

(~~o~~p) Rules to provide for recruitment programs in cooperation with department heads and the employment security agency in keeping with current employment conditions and labor market trends.

(~~p~~q) Rules to establish procedures for examinations as necessary for the purpose of maintaining current registers from which to fill employment vacancies.

(~~q~~r) Other rules not inconsistent with the foregoing provisions of this section as may be necessary and proper for the administration and enforcement of this act.

(~~r~~s) A rule concerning "project exempt" appointments.

(~~s~~t) Rules relating to leave for state employees from official duties, including but not limited to sick leave, military leave, jury duty, leaves of absence without compensation and such other forms of absence from performance of duties in the course of state employment as may be necessary.

(~~t~~u) A rule providing for shift differential pay. Beginning the first full pay period in fiscal year 1992, the rate of such differential pay shall be one and one-half percent (1 1/2%) of the employee's hourly rate; beginning the first full pay period in fiscal year 1993, the differential pay rate shall be three percent (3%); and beginning the first full pay period of fiscal year 1994 and each fiscal year

thereafter, the rate of differential pay shall be five percent (5%).

Approved March 17, 1993.

CHAPTER 68
(H.B. No. 148)

AN ACT

RELATING TO CHEMIGATION; AMENDING SECTION 22-1407, IDAHO CODE, TO INCLUDE AS A CONDITION FOR LICENSURE THE OPTION OF EITHER ATTENDING A CHEMIGATION SEMINAR, OR PASSING A CHEMIGATION EXAMINATION, TO INCREASE THE LICENSE RENEWAL FEE, AND TO CHANGE THE LICENSE RENEWAL DEADLINE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-1407, Idaho Code, be, and the same is hereby amended to read as follows:

22-1407. LICENSE REQUIRED. (1) It shall be unlawful for any person to engage in, conduct or carry on chemigation without first obtaining a license to do so from the Idaho department of agriculture. A person may obtain a chemigation license from the department of agriculture by making application and paying a license fee of twenty-five dollars ($25.00) to the department. On the application for a license, the applicant must certify that the equipment and system they plan to use for chemigation meets department standards and that the owner and person(s) operating the equipment have read the rules and regulations for chemigation in the state of Idaho and that the owner intends to operate and maintain the chemigation system according to the rules and regulations. The equipment certification may be provided to the person proposing to chemigate by the equipment supplier in the case of a new installation. The department shall assist persons in completing their license applications upon request. On the application for licensure, the department may require such other information as it deems necessary. Upon receipt of a properly signed and completed application and the required information and fee, the department shall issue a license to the applicant so that the person can engage in, conduct or carry on chemigation. The department may impose as a condition of licensure that an applicant <u>either</u> attend a seminar conducted, sponsored or accredited by <u>the department or pass an examination</u> regarding chemigation through irrigation systems and ways to avert contaminating the ground water of the state while engaged in chemigation.

(2) The fee for the renewal of the license required by this section shall be ~~five~~ <u>ten</u> dollars ($5<u>1</u>0.00) and shall be paid with the application for license renewal on ~~February~~ <u>or before April</u> 1 of each year. Failure to pay the fees when due forfeits the right to engage in, conduct or carry on chemigation.

(3) Any person who has been previously licensed to engage in, conduct or carry on chemigation and whose license has been forfeited shall not be issued a renewal license except upon written application

to the department accompanied by a sum of money equal to the initial application fee charged in subsection (1) of this section.

(4) The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(a) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license;

(b) The licensee was guilty of willfully violating any of the provisions of this chapter; and

(c) The chemigation equipment is insufficient to protect against accident.

Approved March 18, 1993.

CHAPTER 69
(H.B. No. 149)

AN ACT

RELATING TO THE SEED AND PLANT CERTIFICATION ACT; AMENDING SECTION 22-1503, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO PROVIDE A PROPER CODE CITATION, TO CLARIFY THE DEFINITION OF SEED AND PLANT CERTIFICATION TO NOT INCLUDE WARRANTING SEED, TUBER, PLANTS OR PLANT PARTS TO BE FREE FROM DISEASE OR CONTAMINATION; AMENDING SECTION 22-1504, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO PROVIDE A PROPER CODE CITATION, TO PROVIDE THAT AN AGENT OF THE UNIVERSITY OF IDAHO IS A SERVANT OF THE GOVERNMENTAL ENTITY ACTING IN AN OFFICIAL CAPACITY FOR THE STATE OF IDAHO AND UNDER THE SUPERVISION OF THE COLLEGE OF AGRICULTURE OF THE UNIVERSITY OF IDAHO AND THE DIRECTOR OF THE IDAHO EXPERIMENT STATION; AMENDING SECTIONS 22-1508 AND 22-1509, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 413, LAWS OF 1990, TO PROVIDE PROPER CODE CITATIONS, TO CLARIFY THAT THE PURPOSES OF THE TORT CLAIMS ACT APPLY TO AN AGENT WHICH IS A DELEGATED INSTRUMENTALITY OR ENTITY AND THAT THE LIABILITY PROTECTIONS OF THE TORT CLAIMS ACT APPLY TO AGENTS IN CONDUCTING CERTIFICATION WORK.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-1503, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

~~22-1103~~22-1503. DEFINITIONS. (1) "Breeder seed" means seed or vegetative propagating material directly controlled by the originating, or in certain cases the sponsoring plant breeder or institution, and which provides the source for the initial increase of foundation seed.

(2) "Certified" means the written assurance, in certificate form, of the college of agriculture of the university of Idaho, or of its agent designated hereunder, that the particular seeds, tubers, plants or plant parts have the necessary genetic purity of strain and/or other characteristics to meet the requirements of the rules and regu-

lations promulgated hereunder. Certification by the certifying agent or college of agriculture of the university of Idaho, or its agent, or state of Idaho does not constitute any warranty that certified seeds, tubers, plants or plant parts will be free from disease or contamination.

(3) "Foundation seed" means the progeny of breeder seed stocks that are so handled as to maintain specific genetic identity and purity, and that are designated or distributed by the Idaho agricultural experiment station or private companies.

(4) "Genetic purity" means that the lot of seeds, tubers, plants or plant parts are homogenous for inheritable characteristics as stated in the official description of the variety or strain represented.

(5) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(6) "Plant" or "tubers" or "plants" or "plant parts" mean any variety or strain of plant or part thereof which may be eligible for certification, as hereinafter provided.

(7) "Seed" or "seeds" mean the seed of any variety or strain of plant, including tubers, which may be eligible for certification, as hereinafter provided.

(8) "Variety or strain" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

SECTION 2. That Section 22-1504, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

~~22-1104~~22-1504. ADMINISTRATION OF THE CHAPTER. The regents of the university of Idaho through the Idaho agricultural experiment station in the college of agriculture of the university of Idaho, or the agent of the university of Idaho, an entity or servant of the state, appointed in writing, as hereinafter provided, is hereby authorized to administer the provisions of this chapter to establish, alter, amend and repeal, in compliance with the provisions of chapter 52, title 67, Idaho Code, reasonable rules and regulations as to what shall constitute certified seeds, tubers, plants and plant parts under the terms of this chapter. Such reasonable rules and regulations shall also comprehend and fix the standards necessary to qualify seeds, tubers, plants and plant parts for certification hereunder and procedures for certification by the said college of agriculture or the said agent thereof. All varieties or strains of seed, tubers, plants and plant parts eligible for certification in the state of Idaho shall be approved by the director of the Idaho agricultural experiment station. Any agent designated hereunder shall be a servant of the state of Idaho and shall be acting in an official capacity for the state of Idaho and under the supervision of the college of agriculture of the university of Idaho and the director of the Idaho experiment station consistent with this chapter.

SECTION 3. That Section 22-1508, Idaho Code, as added by Section

2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

~~22-1108~~22-1508. DELEGATION OF AUTHORITY. The regents of the university of Idaho may delegate in writing its authority, or any part thereof, under this chapter to any ~~organization~~ instrumentality or entity as an agent and servant of the state whose principal purpose is to establish and maintain a uniform and reasonable system of certification of seeds, tubers, plants and plant parts. The delegated instrumentality or entity as agent and servant of the state shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code. The university will cooperate with the Idaho department of agriculture in seed analysis and inspection.

SECTION 4. That Section 22-1509, Idaho Code, as added by Section 2, Chapter 413, Laws of 1990, be, and the same is hereby amended to read as follows:

~~22-1109~~22-1509. LIABILITY OF REGENTS LIMITED. The regents of the university of Idaho shall not be financially responsible for debts incurred, damages inflicted, or contracts broken by the certifying ~~agency~~ agent in conducting certification work. The certifying agent shall be entitled to all the protections as provided in the tort claims act, chapter 9, title 6, Idaho Code.

Approved March 18, 1993.

CHAPTER 70
(H.B. No. 151)

AN ACT

RELATING TO LABEL REQUIREMENTS FOR VEGETABLE AND FLOWER SEEDS; AMENDING SECTION 22-415, IDAHO CODE, TO STRIKE THE REFERENCE TO MINIMUM NUMBER OF SEEDS AND TO ALLOW MEASURE BY NET WEIGHT AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-415, Idaho Code, be, and the same is hereby amended to read as follows:

22-415. LABEL REQUIREMENTS -- AGRICULTURAL, VEGETABLE, FLOWER, TREE AND SHRUB SEEDS. Before each container of seed is sold, offered for sale, exposed for sale, or delivered under a contract within this state for sowing purposes, it shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(1) For agricultural seeds and mixtures:

(a) The name of the kind or the kind and variety of each agricultural seed component in excess of five percent (5%) of the whole, and the percentage by weight of each pure seed. The name of the

kind and variety shall be on the label of seeds of wheat, barley and dry-edible beans, or if any mixture containing any kinds herein listed, the names of the varieties shall be listed. When more than one (1) pure seed is present, the word "mixture" or the word "mixed" and the name of the mixture shall be shown conspicuously on the label. Hybrids shall be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Origin by state or foreign country, if known. If the origin is unknown, that fact shall be stated.

(d) Percentage by weight of all other crop seeds combined, none of which individually exceeds five percent (5%) of the total weight. If a mixture contains no crop seed, that shall be stated or shown.

(e) Percentage by weight of inert matter.

(f) Percentage by weight of all weed seeds.

(g) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present. All determinations of noxious weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations under this chapter.

(h) Germination for each named agricultural seed:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar month and year the test was completed to determine the percentages;

(iv) A tetrazolium test is deemed sufficient to meet germination labeling requirements if the species is included in the director's published list.

(i) Name and address of the person who labeled the seed, or who sells or delivers seed under a contract, or his federal consumer marketing service number or agricultural marketing service number.

(2) For vegetable seeds in packets or preplanted containers, mats, tapes or other planting devices:

(a) Name of kind of seed;

(b) Lot identification;

(c) The year for which the seed was packed for sale, or the percentage of germination and the calendar month and year the germination test was completed.

(d) For seeds which germinate less than the standard last established by the director in the rules and regulations promulgated under this chapter:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar month and year the test was completed to determine such percentages;

(iv) The words "Below Standard" in not less than 8-point type;

(v) A tetrazolium test is deemed sufficient to meet germination labeling requirements if the species is included in the director's published list.

(e) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds, a statement to indi-

cate the ~~minimum~~ number of seeds in each container or net weight.

(f) Name and address of the person who labeled the seed, or who sells or delivers seed under a contract, or his federal consumer marketing service number or agricultural marketing service number.

(3) For vegetable seeds, in mixtures, in bulk, or in containers other than packets and preplanted containers, mats, tape, or other devices:

(a) The name of each kind and variety present in excess of five percent (5%) of the whole, and the percentage by weight of each in order of predominance;

(b) Lot identification;

(c) Germination for each named vegetable seed:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar month and year the germination test was completed;

(iv) A tetrazolium test is deemed sufficient to meet germination labeling requirements if the species is included in the director's published list.

(d) The labeling requirements for vegetable seeds in containers of more than eight (8) ounces shall be satisfied if the seed is weighed from an accurately labeled container in the presence of the purchaser.

(e) Name and address of the person who labeled the seed, or his federal consumer marketing service number or agricultural marketing service number.

(4) For flower seeds:

(a) The name of the kind and variety or a statement of type and performance;

(b) The calendar month and year the seed was tested or the year the seed was packaged;

(c) The name and address of the person who labeled or who sells the seed or his federal consumer marketing service number or agricultural marketing service number;

(d) In packets or preplanted containers, mats, tapes or other planting devices, and in addition to the requirements of paragraphs (a) through (c) of subsection (4) of this section:

(i) The ~~minimum~~ number of seeds or net weight in the container;

(ii) The percentage of germination exclusive of hard seed for those seeds which germinate less than the germination standards established in the rules and regulations promulgated under this chapter; and

(iii) The words "Below Standard" in not less than 8-point type.

(e) In containers other than packets or preplanted containers, mats, tapes or other planting devices, and in addition to requirements of paragraphs (a) through (c) of subsection (4) of this section:

(i) Lot number or other lot identification;

(ii) Percentage~~,~~ of germination, ~~of~~ exclusive of hard seed, and the percentage of hard seed, if present.

(5) For tree and shrub seed:

(a) Common name of the species;
(b) The scientific name of the genus and species;
(c) Lot number or other lot identification;
(d) Origin, if known. If the origin is unknown that fact shall be stated:
(i) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, geographic description, or political subdivision;
(ii) For seed collected from other than a predominantly indigenous stand, identify the area of collection and the origin of the stand, or state "origin not indigenous."
(e) The elevation, or the upper and lower limits of elevations, within which the seed was collected.
(f) Purity as a percentage of pure seed by weight.
(g) For those species for which standard germination testing procedures are prescribed by the director:
(i) Percentage~~,~~ of germination, ~~of~~ exclusive of hard seed;
(ii) Percentage of hard seed, if present;
(iii) The calendar year and month the germination test was completed.
(h) Transported in bulk, an invoice is sufficient to meet labeling requirements when the container is identified with a lot number.
(i) The name and address of the person who sells the seed or his federal consumer marketing service number or agricultural marketing service number.
(6) For all agricultural, vegetable, flower, tree and shrub seeds treated to prevent contamination, infection or disease:
(a) A word or statement indicating the seed has been treated;
(b) The common or generic name of the applied substance, or description of the process used;
(c) The appropriate toxicity category signal word and precautionary statements which correspond to the toxicity categories set forth in title 40, code of federal regulations, effective July 1, 1989;

Signal Words for Toxicity Categories

Toxicity Category	Signal Word
I	DANGER If assigned to toxicity category I on the basis of oral, inhalation or dermal toxicity, the word "Poison" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "Poison".
II	WARNING
III	CAUTION
IV	CAUTION

(d) When more than one (1) substance is applied, each substance shall be noted on the label, and the seed shall be labeled for the substance with the higher level of toxicity category; and
(e) An expiration date of any inoculant applied to the seed.
(7) For agricultural seeds coated with any substance which changes the size, shape or weight of the original seed:
(a) Percentage of pure seeds with coating material removed;
(b) Percentage of coating material; and

(c) Percentage of germination.

(8) The arbitration requirement provided in section 22-436, Idaho Code.

Approved March 18, 1993.

CHAPTER 71
(H.B. No. 180)

AN ACT

RELATING TO VETERINARIANS; AMENDING SECTION 54-2113, IDAHO CODE, TO SPECIFY POWER OF THE BOARD TO DISCIPLINE AND TO CLARIFY THE CONDITIONS WHICH CONSTITUTE CONVICTION FOR THE PURPOSES OF DISCIPLINE BY THE BOARD; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2113, Idaho Code, be, and the same is hereby amended to read as follows:

54-2113. REVOCATION OR SUSPENSION -- GROUNDS FOR DISCIPLINE. ~~Upon written complaint sworn to by any person, t~~The board may, after a fair hearing and by a majority of the board, refuse to issue, renew or reinstate, or revoke or suspend for a certain time the license of, or otherwise discipline, any licensed veterinarian for any of the following reasons:

(1) The employment of fraud, misrepresentation or deception in obtaining a license.

(2) Adjudication of insanity.

(3) Unprofessional conduct, which includes, but is not limited to, conviction of a charge of violating any federal or state statute or rule ~~of the state~~ or regulation regulating narcotics, dangerous drugs or controlled substances~~, and the record of the conviction is conclusive evidence~~.

(4) The use of advertising or solicitation which is false, misleading, or fraudulent.

(5) ~~Conviction of a crime substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which the case record of such conviction shall be conclusive evidence.~~ Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:

(a) Any felony; or

(b) Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of veterinary medicine, surgery, or dentistry.

(6) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.

(7) Having professional association with or employing or lending one's name to any illegal practitioner of veterinary medicine and the

various branches thereof.

(8) Fraud or dishonesty in the application treatment, or reporting of any test for disease in animals.

(9) Failure to keep one's veterinary medical facility and all equipment therein in a clean and sanitary condition.

(10) Failure to report, as required by law, or making false report of, any contagious or infectious disease.

(11) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates.

(12) Cruelty to animals.

(13) The revocation by a sister state or territory of a license or certificate by virtue of which one (1) is licensed to practice veterinary medicine in that state, territory or district of the United States on grounds other than nonpayment of renewal fees.

(14) Aiding or abetting or violating any of the provisions of this chapter or any lawful rule, regulation or order of the board.

(15) For the purposes of this chapter, the term "conviction" means a finding of guilt, an entry of a guilty plea by a defendant and its acceptance by the court, or a forfeiture of bail bond or collateral deposited to secure a defendant's appearance, suspended sentence, probation or withheld judgment.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 72
(H.B. No. 181)

AN ACT

RELATING TO LICENSURE TO PRACTICE VETERINARY MEDICINE; REPEALING SECTIONS 54-2108 AND 54-2109, IDAHO CODE; AMENDING SECTION 54-2104, IDAHO CODE, TO PERMIT PRACTICE OF AN ALLIED HEALTH PROFESSIONAL UNDER INDIRECT SUPERVISION; AMENDING SECTION 54-2107, IDAHO CODE, TO REVISE THE LICENSE APPLICATION PROCESS AND ADOPT SPECIFIED EXAMINATIONS; AMENDING SECTION 54-2110, IDAHO CODE, TO PROVIDE FOR LICENSURE WITHOUT THE CLINICAL COMPETENCY TEST WITH SPECIFIED LIMITATIONS; AMENDING SECTION 54-2111, IDAHO CODE, TO AUTHORIZE A TEMPORARY PERMIT WITHOUT THE CLINICAL COMPETENCY TEST; AMENDING SECTION 54-2112, IDAHO CODE, TO PROVIDE FOR INACTIVE STATUS OF A VETERINARIAN; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 54-2108 and 54-2109, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 54-2104, Idaho Code, be, and the same is hereby amended to read as follows:

54-2104. LICENSE A PREREQUISITE TO PRACTICE -- EXCEPTIONS. (1) No person may practice veterinary medicine in the state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board.

(2) This chapter shall not be construed to prohibit:

(a) A veterinarian employed by the federal, state, or local government performing his official duties.

(b) A person who is a regular student currently enrolled and in good standing in a veterinary school performing duties or actions assigned by his instructors, or working under the direct supervision of a licensed veterinarian during a school vacation period.

(c) Idaho extension personnel from performing their official duties.

(d) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this state.

(e) Any merchant or manufacturer selling medicines, biologics, feed, medicated feed, appliances or other products for the prevention or treatment of animal and poultry diseases.

(f) A farmer, rancher or feedlot operator, including custom ranch or feedlot operators, and the employees or agents thereof, from caring for and treating animals within their possession or control including castration or dehorning, or the owner of an animal or his employee from caring for and treating the animal belonging to such owner, or livestock owners or employees pregnancy testing their own or employer's cattle or the exchange of services between owners or their employees or agents who are farmers, ranchers or feedlot operators, including custom ranch or feedlot operators, except where the ownership or possession of the animal was transferred for the purposes of circumventing this chapter.

(g) A member of faculty of a veterinary school or veterinary science department, performing his regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department, or in connection with a continuing education course or seminar.

(h) Any person selling or applying any pesticide, insecticide, or herbicide.

(i) Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals.

(j) Any person performing artificial insemination of domestic animals as governed by chapter 8, title 25, Idaho Code.

(k) Any person horseshoeing or hoof trimming bovine, equine and farm animals.

(l) A member of an allied health profession participating in a procedure involving an animal, under the ~~immediate~~ indirect supervision of a licensed veterinarian.

(m) The gratuitous treatment of animals in an emergency as a neighborly act.

(n) Any state or federal livestock inspector while in the performance of official duties.

(o) A certified euthanasia technician from performing those duties as defined by the board under accompanying rules and regulations.

(p) Any person from utilizing cotton swabs, gauze, dental floss,

dentifrice, toothbrushes or similar items to clean an animal's teeth.

SECTION 3. That Section 54-2107, Idaho Code, be, and the same is hereby amended to read as follows:

54-2107. LICENSE APPLICATION -- CONTENTS -- FEE. Any person desiring a license to practice veterinary medicine in this state shall make written application to the board. ~~The application shall show that the applicant is twenty-one (21) years of age, or more, a graduate of a veterinary school, a person of good moral character, and such other information and proof as the board may require by rule. The application shall be accompanied by a fee in the amount established and published by the board. If the board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination.~~ To apply for a veterinary license, the applicant shall complete the "application for licensure to practice veterinary medicine and surgery" available from the board office. A completed application includes:

(1) A copy of a birth certificate proving that the applicant is twenty-one (21) years of age or more.

(2) Affidavits from two (2) veterinarians currently licensed in any state attesting to the fact that the applicant is of good moral character.

(3) A certified copy of a veterinary school diploma or a letter from the graduate's school verifying satisfactory graduation or, if a foreign school graduate, a letter from the American veterinary medical association's educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of the ECFVG certificate.

(4) Passing scores on the national board exam (NBE) and the clinical competency test (CCT), which may be taken in any state at any time (no time limit).

(5) A passing score of at least ninety percent (90%) correct on the Idaho jurisprudence examination.

(6) Written verification of license in good standing in any state in which the applicant has held a license.

(7) The license application fee in the amount established in the rules and regulations adopted by the board.

(8) Any additional information that the board may request.

The board will review applications and issue licenses in January and June of each year. Applicants shall have their completed applications at the board office by the first day of January or June. If an applicant is found not qualified ~~to take the examination, the secretary-treasurer of~~, the board shall immediately notify the applicant in writing of such finding and grounds therefor. An applicant found unqualified may require a hearing on the question of qualification under the procedure set forth in section 54-2115, Idaho Code. Any applicant who is found not qualified shall be allowed the return of the application fee.

SECTION 4. That Section 54-2110, Idaho Code, be, and the same is hereby amended to read as follows:

54-2110. LICENSE WITHOUT ~~EXAMINATION~~ CLINICAL COMPETENCY TEST (CCT). (1) ~~The board may issue a license without examination to a qualified applicant who furnishes satisfactory proof that the applicant is a graduate of a veterinary school and who meets the following requirements:~~

~~(a) The applicant has for the five (5) years immediately prior to making application been a practicing veterinarian licensed in a state, territory or district of the United States having license requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this chapter; and~~

~~(b) The applicant shall submit to the office of the board a duly attested certificate from the examining board of the state or territory in which the applicant is licensed and has been lawfully and continuously practicing veterinary medicine, surgery and dentistry for five (5) years or more immediately before filing application to practice in this state, certifying to the fact of licensure and of being a person of good moral character and of professional attainments; and~~

~~(c) The applicant is a resident of Idaho; and~~

~~(d) The applicant is not currently under investigation for violation of any veterinary practice act, and has never been disciplined by the veterinary licensing authority of any other state, territory or country, and has not been found guilty of a crime, the circumstances of which are substantially related to the practice of veterinary medicine; and~~

~~(e) The applicant shall submit three (3) recommendations on forms prescribed by the board. The recommendations shall be completed by licensed veterinarians from the state in which the applicant has practiced for the five (5) years immediately preceding application; and~~

~~(f) Applications for licensure under this section shall be made no later than January 1 of each year. If all requirements under this section are met, a license shall be granted by March 1. If requirements under this section are not met, the board shall notify the applicant by March 1; and~~

~~(g) Failure to comply with any requirement of this section results in immediate license revocation, but does not exclude the individual from applying for and taking the state board examination.~~

~~(2)~~ The board may, upon payment of the fee prescribed under section 54-2107, Idaho Code, license without ~~examination~~ the CCT any person who is a diplomate with current certification from a specialty board approved by the American veterinary medical association. The applicant shall pass the Idaho jurisprudence exam with a score of at least ninety percent (90%) correct. The veterinary practice of any person who is licensed pursuant to this subsection is limited to the specialty in which the person is board certified.

~~(3) If an applicant for a license under this section is denied a license, any fee or fees tendered by the applicant may be returned at the discretion of the board. The applicant may, however, apply for and take the state board examination.~~

(~~4~~2) The board may require a personal interview of any or all

applicants under this section.

SECTION 5. That Section 54-2111, Idaho Code, be, and the same is hereby amended to read as follows:

54-2111. TEMPORARY PERMIT. The board may, at its discretion, issue a temporary permit to an applicant ~~without an examination to practice veterinary medicine prior to taking the examination, if the applicant is working under the professional supervision of a veterinarian licensed in this state~~ who has passed the NBE and Idaho jurisprudence exam but who has not yet taken the CCT. The temporary permit shall be valid ~~only until the date of the next examination~~ for no more than one (1) year, during which the applicant shall take and pass the CCT, and under no circumstances shall a second temporary permit be issued to the same person. A temporary permit shall not be issued to ~~a person who has failed an examination under the provisions of sections 54-2107 through 54-2109, Idaho Code, nor shall a temporary permit be issued to any applicant not holding a valid license to practice veterinary medicine in any other state, territory, or district of the United States, nor shall a temporary permit be issued to~~ any applicant whose license has been revoked in any state for a reason other than nonpayment of license renewal fees. An applicant granted a temporary permit shall provide verification of one (1) year of veterinary practice in another state or shall work under the supervision of a veterinarian licensed in Idaho.

SECTION 6. That Section 54-2112, Idaho Code, be, and the same is hereby amended to read as follows:

54-2112. EXPIRATION OF LICENSE -- NOTICE -- RENEWAL -- INACTIVE STATUS. All licenses shall expire annually on July 1 of each year, but may be renewed by submission of proof of completion of the appropriate hours of continuing education and by meeting other requirements as defined in the rules and regulations adopted by the board and by payment of the renewal fee established and published by the board. On or about May 1 of each year, the board shall mail a notice to each licensed veterinarian that the license will expire on July 1, and shall also provide a form for renewal. The board shall issue a new license to all persons registering under this chapter.

Any veterinarian licensed in Idaho who advises the veterinary board, in writing, that he or she does not intend to actively practice veterinary medicine in the state of Idaho and therefore does not intend to meet the licensing requirements for the current licensing year, shall be transferred from active to inactive status and shall be required to pay an inactive status fee as prescribed in the rules and regulations of the board. Any person may transfer from inactive to active status by making written application for reinstatement to active status and by meeting other requirements for reinstatement as defined in the rules and regulations of the board.

Any person who shall practice veterinary medicine after the expiration of a license or during inactive status and who ~~wilfully or by neglect~~ fails to renew or reinstate the license shall be practicing in violation of this chapter. Any person may renew an expired license

within five (5) years of the date of its expiration by making written application for renewal and paying the current reinstatement and renewal fees plus all delinquent renewal fees and by meeting other requirements as defined in the rules of the board. After five (5) years have elapsed since the date of expiration, a license may not be renewed, but the holder may make application for a new license.

The board may by rule waive the payment of the registration renewal fee of a licensed veterinarian during the period when the ~~license~~ licensee is on active duty with the armed services of the United States, not to exceed the longer of three (3) years or the duration of a national emergency.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 73
(H.B. No. 267)

AN ACT

RELATING TO HEALTH CARE PROFESSIONALS; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 44, TITLE 54, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE BOARDS OF HEALTH CARE PROFESSIONS CAN ENTER INTO AGREEMENTS WITH PEER ASSISTANCE ENTITIES IN ORDER TO PROVIDE TREATMENT FOR CHEMICALLY, PSYCHOLOGICALLY OR PHYSICALLY IMPAIRED PROFESSIONALS, TO PROVIDE RECORDS OF PEER ASSISTANCE ENTITIES ARE NOT DISCOVERABLE, TO PROVIDE LIMITED IMMUNITY FROM LIABILITY FOR MEMBERS, EMPLOYEES AND CONTRACTORS OF PEER ASSISTANCE ENTITIES AND PERSONS SUPPLYING INFORMATION TO SUCH ENTITIES, TO PROVIDE RULE MAKING AUTHORITY TO THE BUREAU OF OCCUPATIONAL LICENSES, TO PROVIDE FOR REFERRAL AUTHORITY, AND TO REQUIRE A PEER ASSISTANCE ENTITY TO REPORT TO THE BOARD IF A HEALTH CARE PROFESSIONAL CONTINUES TO PRACTICE IN AN IMPAIRED STATE AFTER ENTERING A PEER ASSISTANCE PROGRAM, TO ALLOW ACCESS TO INFORMATION AND REPORTS, AND TO PROVIDE THAT THIS CHAPTER DOES NOT SUPERSEDE ANY DUTY TO WARN OR TO REPORT CHILD ABUSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 44, Title 54, Idaho Code, and to read as follows:

CHAPTER 44
PEER ASSISTANCE ENTITY AGREEMENTS

54-4401. DEFINITIONS. As used in this chapter:

(1) "Board" means:

(a) The state board of podiatry as established in chapter 6,

title 54, Idaho Code;

(b) The state board of chiropractic physicians as established in chapter 7, title 54, Idaho Code;

(c) The state board of dentistry as established in chapter 9, title 54, Idaho Code;

(d) The state board of nursing as established in chapter 14, title 54, Idaho Code;

(e) The state board of optometry as established in chapter 15, title 54, Idaho Code;

(f) The state board of pharmacy as established in chapter 17, title 54, Idaho Code;

(g) The state board of medicine as established in chapter 18, title 54, Idaho Code;

(h) The board of veterinary medicine as established in chapter 21, title 54, Idaho Code;

(i) The Idaho state board of psychologist examiners as established in chapter 23, title 54, Idaho Code;

(j) The state board of social work examiners as established in chapter 32, title 54, Idaho Code;

(k) The Idaho state counselor licensing board as established in chapter 34, title 54, Idaho Code; and

(l) Any health care related board granted licensing authority by the legislature after July 1, 1993.

(2) "Peer assistance entity" means an organization, a program, a committee or a professional association which is designed to address any or all of the following issues affecting practitioners of the health care professions: chemical dependency and/or impairment; psychological impairment; and mental or physical impairment.

54-4402. AGREEMENTS WITH PEER ASSISTANCE ENTITIES. (1) The board may enter into agreements with peer assistance entities to undertake those functions and responsibilities specified in the agreements which assist the board in performing its duties, implementing disciplinary actions or sanctions, and in addressing potential or confirmed problems of chemical dependency and/or impairment, psychological impairment, and mental or physical impairment affecting board licentiates.

(2) To fund the activities of a peer assistance entity as specified and undertaken under an agreement, the board may annually allocate to the entity a portion of each licentiate registration, certification or licensure fee, or any portion of additional funds available to the board from other sources.

(3) In addition to any other fees or professional dues imposed by the board, the board may make a peer assistance special assessment of not more than fifty dollars ($50.00) per year to fund the activities of a peer assistance entity. If a board has a statutorily established limit on the amount of professional dues or fees it can assess its licensees, the peer assistance special assessment shall not be included in the total amount of professional dues or fees assessed by a board for such statutory limitation purposes.

(4) Pursuant to chapter 52, title 67, Idaho Code, the board may adopt rules and regulations necessary for the administration of a peer assistance entity program.

54-4403. RECORDS AND PROCEEDINGS OF PEER ASSISTANCE ENTITIES. Except as provided in sections 54-4406 and 54-4407, Idaho Code:

(1) The records and proceedings of a peer assistance entity which could be used to identify or provide information regarding individual past or present participants in a peer assistance entity program are not subject to subpoena or discovery and are not admissible as evidence in an administrative proceeding or a criminal or civil action.

(2) Members of the board of directors of a peer assistance entity, and employees, contractors and past or present participants in a peer assistance entity program may not be compelled to testify before any agency, board or court with respect to the peer assistance entity's records and proceedings regarding a past or current peer assistance entity program participant nor shall they disclose information or be examined regarding any past or current participant in a peer assistance entity program if that information was obtained as a result of performing duties within his regular scope of functions for the peer assistance entity program, or as a program participant.

(3) Records regarding a participant shall be released if a properly completed release form signed by the participant is submitted.

54-4404. PROTECTED ACTION AND COMMUNICATION. There shall be no liability on the part of and no action for damages against:

(1) Any board member, employee or contractor of a peer assistance entity for any action undertaken or performed by such person within the scope of the functions of such peer assistance entity under this chapter when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(2) Any person providing information to the peer assistance entity without malice in the reasonable belief that such information is accurate.

54-4405. ADMINISTRATIVE RULES. Pursuant to the provisions of chapter 52, title 67, Idaho Code, the bureau of occupational licenses may promulgate such rules as are necessary to properly administer the addition of health care related boards as provided in section 54-4401, Idaho Code.

54-4406. REFERRAL IN ADDITION TO OR IN LIEU OF DISCIPLINE. (1) In addition to or in lieu of any disciplinary action, the board may refer a licensee who is chemically dependent or physically or psychologically impaired to a peer assistance entity.

(2) The peer assistance entity shall report to the board and provide all pertinent information concerning any licensee who is referred to the peer assistance entity under subsection (1) of this section.

54-4407. PEER ASSISTANCE ENTITY TO REPORT TO BOARD. (1) The legislature recognizes that confidentiality is essential to obtaining maximum disclosure from impaired health care professionals; such disclosure is vital to the success of the peer assistance process. It is also recognized that the public must be protected from health care professionals who continue to practice in an impaired state.

(2) If the peer assistance entity reasonably believes that a health care professional continues to practice in an impaired state

after entering into the peer assistance entity's program and despite the peer assistance entity's recommendations for treatment or modification of practice to remove risk to the public from the effects of the impairment, the peer assistance entity shall immediately notify the appropriate board regarding the impaired health care professional and provide all documentation relevant to substantiate the impaired practice. Similarly, if the licensing board reasonably believes that a health care professional continues to practice in an impaired state, it can require the peer assistance entity to provide all documentation available on the current ability to practice of the individual. Information that does not deal directly with the professional ability to practice will remain privileged.

(3) The board shall have access to financial and administrative records necessary to determine contract compliance and to reports regarding aggregate statistical information; provided, information released pursuant to this subsection shall not contain data which could be used to specifically identify past or present peer assistance program participants.

(4) The board shall have the authority to use any documentation or information supplied to it from a peer assistance entity pursuant to this section or section 54-4406, Idaho Code, as it deems necessary and which is consistent with applicable Idaho law.

(5) Nothing in this chapter shall be deemed to supersede any duty to report under chapter 19, title 6, or section 16-1619 or 16-1620, Idaho Code.

Approved March 18, 1993.

CHAPTER 74
(H.B. No. 373)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1993; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made by Section 2, Chapter 211, Laws of 1992, there is hereby appropriated to the Department of Lands the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
A. SUPPORT SERVICES:						
FROM:						
Department of Lands Fund		$ 70,000				$ 70,000
B. FOREST RESOURCES MANAGEMENT:						
FROM:						
General Fund	$ 30,000	$ 15,000				$ 45,000
Expendable Trust Fund				$75,000		75,000
TOTAL	$ 30,000	$ 15,000		$75,000		$ 120,000
C. FOREST AND RANGE FIRE PROTECTION:						
FROM:						
General Fund					$4,185,000	$4,185,000
Fire Suppression Deficiency Fund					733,800	733,800
TOTAL					$4,918,800	$4,918,800
D. SOIL & WATER CONSERVATION:						
FROM:						
Department of Lands Fund	$ 99,900	$ 53,100	$15,000			$ 168,000
GRAND TOTAL	$129,900	$138,100	$15,000	$75,000	$4,918,800	$5,276,800

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 75
(S.B. No. 1006)

AN ACT

RELATING TO THE PERSONNEL COMMISSION; AMENDING SECTION 67-5302, IDAHO CODE, TO ADD A PROVISION TO ALLOW THE DIRECTOR OF THE PERSONNEL COMMISSION TO EXTEND THE 1,385 HOUR LIMIT FOR TEMPORARY APPOINTMENTS UPON PETITION BY THE APPOINTING AUTHORITY OF THE DEPARTMENT OF LANDS DEMONSTRATING GOOD CAUSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5302, Idaho Code, be, and the same is hereby amended to read as follows:

67-5302. DEFINITIONS. As used in this chapter, and other applicable sections of the Idaho Code, each of the terms defined in this section shall have the meaning given in this section unless a different

meaning is clearly required by the context. Such terms and their definitions are:

(1) "Administrative employee" means any person, nonclassified or classified appointed to a position which meets the following criteria:

1. (a) Responsible office or nonmanual work directly related to the management policies of a department or section; or

(b) Responsible work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment; and

2. The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures. The employee must have the authority to make important decisions; and

3. The employee must:

(a) Regularly assist a bona fide executive or administrative employee; or

(b) Perform work under general supervision along specialized or technical lines requiring special training, experience or knowledge; or

(c) Execute under only general supervision special assignments; and

4. The employee is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.

5. Final designation of a classified position as "administrative" within this definition shall be made by the Idaho personnel commission.

(2) "Appointing authority" means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to make appointments to or employ personnel in any department.

(3) "Class" means a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience or skill, and other characteristics, that the same title, the same tests of fitness and the same schedule of compensation may be applied to each position in the group.

(4) "Classified officer or employee" means any person appointed to or holding a position in any department of the state of Idaho which position is subject to the provisions of the merit examination, selection, retention, promotion and dismissal requirements of chapter 53, title 67, Idaho Code.

(5) "Commission" means the Idaho personnel commission.

(6) "Compensatory time" means approved time off from duty provided in compensation for overtime hours worked.

(7) "Department" means any department, agency, institution or office of the state of Idaho.

(8) "Eligible" means a person who has been determined to be qualified for a classified position and whose name has been placed on the register of eligibles.

(9) "Executive employee" means any person, nonclassified or classified, appointed to a position equivalent to a bureau chief or above

as provided in section 67-2402, Idaho Code, or any employee meeting the following criteria:

1. An individual whose primary duty is management of a department, division or section; and

2. Who customarily and regularly directs the work of at least two (2) or more other employees therein; and

3. Who has the authority to hire and fire, or to recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given particular weight; and

4. Who customarily and regularly exercises discretionary powers; and

5. Who is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.

6. Final designation of a classified position as "executive" in this definition shall be made by the Idaho personnel commission.

(10) "Exempt employee" means any employee, classified or nonclassified, who is determined to be an executive, professional or administrative employee as defined herein, or who qualifies for any other exemption from cash compensation for overtime under applicable federal law. Final designation of a classified position as exempt shall be made by the Idaho personnel commission.

(11) "Full-time employee" means any employee working a forty (40) hour work week.

(12) "Holiday" means the following:

January 1 (New Year's Day);
Third Monday in January (Martin Luther King, Jr.-Idaho Human R Day);
Third Monday in February (Washington's Birthday);
Last Monday in May (Decoration Day);
July 4 (Independence Day);
First Monday in September (Labor Day);
Second Monday in October (Columbus Day);
November 11 (Veteran's Day);
Fourth Thursday in November (Thanksgiving);
December 25 (Christmas).

In addition, the term "holiday" shall mean any day so designated by the President of the United States or the governor of this state for a public fast, thanksgiving or holiday.

In the event that a holiday occurs on a Saturday, the preceding Friday shall be a holiday, and if the holiday falls on a Sunday, the following Monday shall be a holiday.

A holiday is a day of exemption from work granted to employees during which said employees shall be compensated as if they actually worked.

(13) "Hours worked" means those hours actually spent in the performance of the employee's job and shall not include holidays, vacation or sick leave or other approved leave of absence.

(14) "Nonclassified employee" means any person appointed to or holding a position in any department of the state of Idaho, which position is exempted from the provisions of chapter 53, title 67, Idaho Code, as provided for in section 67-5303, Idaho Code.

(15) "Normal work week" means any forty (40) hours worked during

a particular one hundred and sixty-eight (168) hour period as previously established by the employee's appointing authority.

(16) "Open competitive examination" means an examination which may be taken by qualified applicants to compete on an equal basis for listing on the register of eligibles.

(17) "Overtime work" means time worked on holidays and time worked in excess of forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, except that in the case of those employees engaged in law enforcement, correctional and fire protection activities characterized by irregular shift work schedules, time worked in excess of one hundred sixty (160) hours in a period of twenty-eight (28) consecutive days shall constitute overtime work within the meaning of this chapter.

(18) "Participating department" means any department of the state of Idaho which employs persons in classified positions subject to the merit examination, selection, retention, promotion and dismissal requirements of this chapter.

(19) "Part-time employee" means any employee whose usually scheduled work is less than forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours.

(20) "Personnel system" means the procedure for administering employees in accordance with this chapter.

(21) "Political office" means a public office for which partisan politics is a basis for nomination, election or appointment.

(22) "Political organization" means a party which sponsors candidates for election to political office.

(23) "Position" means a group of duties and responsibilities legally assigned or delegated by one (1) or more appointing authorities and requiring the employment of one (1) person.

(24) "Professional employee" means any person, nonclassified or classified, appointed to a position which meets the following criteria:

1. The employee's primary duty must be either:

(a) Work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study; or

(b) Work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on his invention, imagination, or talent; or

(c) Work as a teacher certified or recognized as such in a school system or educational institution by which he is employed; and

2. The employee must consistently exercise discretion and judgment; and

3. The employee must do work that is predominantly intellectual and varied, as distinguished from routine or mechanical duties; and

4. The employee is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.

5. Final designation of a classified position as "professional"

within this definition shall be made by the Idaho personnel commission.

(25) "Provisional appointment" means appointment to a classified position pending the establishment of a register for such position and employment shall not be continued in this status longer than thirty (30) days after establishment of a register.

(26) "Qualifying examination" means an examination given to a selected person to determine eligibility for reclassification or appointment to a position in a classification.

(27) "Register" means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established by the commission.

(28) "Seasonal appointment" means an appointment to a position which is permanent in nature, but which has intermittent work periods throughout the year.

(29) "Service rating" means a recorded evaluation of work performance and promotional potential of an employee by his supervisor.

(30) "Temporary appointment" means appointment to a position which is not permanent in nature, and in which employment will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period. No person holding a temporary appointment may work in excess of one thousand three hundred eighty-five (1,385) hours during a twelve (12) month period of time for any one (1) department, except upon petition by the appointing authority of the department of lands that demonstrates good cause, the director of the personnel commission may extend the one thousand three hundred eighty-five (1,385) hour limit for employees of the department who are required to perform fire suppression activities.

(31) "Vacation leave" means a period of exemption from work granted to employees during which time said employees shall be compensated. The term shall not include compensatory time for overtime work.

Approved March 18, 1993.

CHAPTER 76
(S.B. No. 1027)

AN ACT

RELATING TO PUBLIC SCHOOL ENROLLMENT OPTIONS; AMENDING SECTION 33-1402, IDAHO CODE, TO ALLOW FOR THE TRANSFER OF PUPILS WITHIN THE HOME DISTRICT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1402, Idaho Code, be, and the same is hereby amended to read as follows:

33-1402. ENROLLMENT OPTIONS. Beginning with the 1991-92 school year, an enrollment options program shall be implemented as provided in this section.

Whenever the parent or guardian of any pupil determines that it is in the best interest of the pupil to attend a school within another district, or to attend another school within the home district, such pupil, or pupils, may be transferred to and attend the selected school, subject to the provisions of this section and section 33-1404, Idaho Code. The pupil's parent or guardian must apply annually for admission to a school within another district, or to another school within the home district, on a form provided by the state department of education. The application, accompanied by the pupil's accumulative record, must be submitted to the receiving school district by February 1 for enrollment during the following school year, and notice of such application given to the home district. The receiving school district, or the receiving school within the home district, shall notify the applicant within sixty (60) days and, if denied, must include written explanation of the denial. Upon agreement between the resident and the nonresident school boards, or between the affected schools within the home district, the deadlines for application may be waived. Whenever any pupil enrolls in, and attends a school outside the district within which the parent or guardian resides, the parent or guardian shall be responsible for transporting the pupil to and from the school or to an appropriate bus stop within the receiving district. For students attending another school within the home district, the parent or guardian is responsible for transporting the pupil to and from an appropriate bus stop. Tuition shall be waived for any pupils allowed under the provisions of this section.

No pupil shall gain eligibility to participate in extracurricular activities in violation of policies governing eligibility as a result of an enrollment option transfer to another school district.

A pupil who applies and is accepted in a nonresident school district, but fails to attend the nonresident district, shall be ineligible to again apply for an enrollment option in that nonresident district.

No district shall take any action to prohibit or prevent application by resident pupils to attend school in another school district or to attend another school within the home district. By resolution of the board of trustees, any district may opt not to receive pupils in the enrollment options program.

A pupil under suspension or expulsion shall be ineligible for the provisions of this section.

The state department of education shall conduct an annual survey of districts participating in the enrollment options program to determine the number of participants, the number of denied applications, the effectiveness of the program, and other relevant information, and prepare an annual report of the program.

Approved March 18, 1993.

CHAPTER 77
(S.B. No. 1038)

AN ACT

RELATING TO THE STATE PERSONNEL SYSTEM; AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT WARDENS EMPLOYED BY THE DEPARTMENT OF CORRECTION SHALL BE NONCLASSIFIED EMPLOYEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5303, Idaho Code, be, and the same is hereby amended to read as follows:

67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified employees, who are subject to this act and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor, and state superintendent of public instruction who are appointed on and after the effective date of this act.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department in addition to those declared to be nonclassified by other provisions of law.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho supreme court and district courts.

(h) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho department of vocational education and vocational rehabilitation administered by the state board for vocational education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in aca-

demic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equivalent to three hundred and fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrevocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division not assigned to the bureau of disaster services.

(l) Patients, inmates or students employed in a state institution.

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific individuals or groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey advertising commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho prune commission, as provided in chapter 30, title 22, Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint grower's commission, as provided in chapter 38, title 22, Idaho Code; the state board of sheep commissioners, as provided in chapter 1, title 25, Idaho Code; the state brand board, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of the division of correctional industries within the department of correction.

(r) All wardens employed by the department of correction.

Approved March 18, 1993.

CHAPTER 78
(S.B. No. 1047)

AN ACT

RELATING TO TAXIDERMISTS' AND FUR BUYERS' RECORDS; AMENDING SECTIONS 36-603 AND 36-604, IDAHO CODE, TO PROVIDE ALTERNATIVE FORMS OF RECORD RETENTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-603, Idaho Code, be, and the same is hereby amended to read as follows:

36-603. TAXIDERMISTS' AND FUR BUYERS' RECORDS. Any person licensed under the provisions of this chapter shall keep a ~~written~~ record for two (2) years last past of wildlife or the hides, skins, or pelts thereof received for preserving or sale. Records may be written or may be retained on media other than paper, provided that the form or medium complies with the standards set forth in section 9-328, Idaho Code. Such record shall be made upon a form provided by the department which sets forth such information as may be required by the director and shall be subject to his inspection at any time.

SECTION 2. That Section 36-604, Idaho Code, be, and the same is hereby amended to read as follows:

36-604. PENALTIES FOR FAILURE TO KEEP RECORD. No person shall fail to keep a complete written record, or any record which meets the standards set forth in section 9-328, Idaho Code, as required by this chapter and/or related commission regulations or commit any falsification, omission or alterations. In addition to any other penalties, such acts shall be grounds for the revocation of any license issued pursuant to the provisions of this chapter for a period of not to exceed twelve (12) months.

Approved March 18, 1993.

CHAPTER 79
(S.B. No. 1048)

AN ACT

RELATING TO SALE OF GAME ANIMALS; AMENDING SECTION 36-501, IDAHO CODE, TO CLARIFY THAT THE DEPARTMENT OF FISH AND GAME CANNOT PROHIBIT BY RULE SALES WHICH ARE NOT OTHERWISE PROHIBITED BY FEDERAL STATUTE OR REGULATION OR BY STATE STATUTE, TO AUTHORIZE POSSESSION AND SALE OF NATURALLY SHED ANTLERS OR HORNS OF DEER, ELK, MOOSE, ANTELOPE AND MOUNTAIN GOAT, AND TO PROVIDE PROPER TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-501, Idaho Code, be, and the same is hereby amended to read as follows:

36-501. SALE AND PURCHASE OF WILDLIFE -- RESTRICTIONS -- EXCEPTIONS. No person shall sell or buy any species of wildlife or parts thereof except as hereinafter provided.

(a) Sale of Unprotected Wildlife. The sale of legally taken species of wildlife classified as unprotected by law shall be lawful.

(b) Sale of Game Animals. The sale of legally taken hides, horns, or heads of game animals, when detached from the carcass, and mounted wildlife, where sale is not specifically prohibited by federal statute or regulation or state statutes ~~or regulations~~, shall be lawful only when the wildlife to be sold is accompanied by a statement showing that the animals were lawfully taken. It shall be lawful to possess or sell naturally shed antlers or horns of deer, elk, moose, antelope and mountain goat, and antlers or horns of deer, elk, moose, antelope and mountain goat which have died from natural causes.

(c) Sale of Furbearers. The sale of pelts and parts of furbearers when legally taken shall be lawful.

(d) Sale of Seized Wildlife. The sale and purchase of court confiscated, abandoned, or unclaimed wildlife shall be lawful when made in accordance with the provisions of section 36-1304, Idaho Code.

(e) Sale of Commercially Raised or Harvested Wildlife. The sale of wildlife legally raised or harvested commercially by properly licensed commercial operations, if required to be licensed, shall be lawful except as provided by ~~regulations~~ rules promulgated pursuant to section 36-104(b)6., Idaho Code. The provisions of this section shall not apply to domestic fur-bearing animals as defined in chapter 30, title 25, Idaho Code.

(f) Sale of Steelhead Trout. 1. Any person holding a wholesale steelhead trout buyer's license may purchase or sell steelhead trout in the state of Idaho that have been taken by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty or executive order, provided that the Indian fisherman is an enrolled member of the tribe holding such rights and the code of such tribe authorizes such sales. A wholesale license is necessary to purchase steelhead trout directly from Indian fishermen or from any other seller whose principal place of business is located outside of the state of Idaho.

2. Any person holding a retail steelhead trout buyer's license may purchase steelhead trout in the state of Idaho from an Idaho licensed wholesale steelhead trout buyer, or from any Indian fisherman lawfully exercising fishing rights authorized by federal statute, treaty, or executive order. A licensed retail steelhead trout buyer may sell steelhead trout directly to the consumer or to an establishment that prepares steelhead trout for consumption.

3. Establishments that prepare steelhead trout for consumption must possess a wholesale or retail steelhead trout buyer's license; however, these licensed establishments may purchase steelhead trout from either wholesale or retail licensed steelhead trout buyers.

4. The fee for a wholesale license shall be fifty dollars ($50.00) per year. The fee for a retail license shall be ten dol-

lars ($10.00) per year. All fees collected pursuant to this subsection shall be deposited in the fish and game account created pursuant to section 36-107, Idaho Code. These licenses shall expire December 31 of the year for which they are valid.

5. No license is required for any person purchasing steelhead trout for personal consumption from a licensed wholesale or retail steelhead trout buyer or from an Indian fisherman lawfully exercising fishing rights authorized by federal statute, treaty, executive order, or tribal code or regulation.

6. Purchases or sales under this section shall be made under conditions and reporting requirements prescribed by commission regulation, provided that said conditions and reporting requirements are limited to those necessary to identify the source of steelhead purchased.

Any person violating the provisions of this subsection shall be found guilty as provided in section 36-1401, Idaho Code, and shall be punished as set forth in section 36-1402, Idaho Code.

(g) Commission May Permit Sales. The commission may, by ~~regulation~~ rule, permit the sale of other parts of wildlife when such sale will not injuriously affect the species permitted.

Approved March 18, 1993.

CHAPTER 80
(S.B. No. 1056)

AN ACT

RELATING TO A COMPACT WITH ADJACENT STATES CONCERNING JURISDICTION OVER INMATE FIREFIGHTERS WHILE OUTSIDE THE STATE OF CONVICTION; AMENDING TITLE 38, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 38, IDAHO CODE, TO PROVIDE AN INTERSTATE INMATE FIREFIGHTING COMPACT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 38, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 16, Title 38, Idaho Code, and to read as follows:

CHAPTER 16
INTERSTATE FOREST FIRE SUPPRESSION COMPACT

38-1601. INTERSTATE INMATE FIREFIGHTER COMPACT. The "Interstate Inmate Firefighter Compact" is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE FOREST FIRE SUPPRESSION COMPACT

ARTICLE I--Purpose and Policy

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property and natural resources in the party states. The purpose of this compact is also, in emergent situations, to allow a sending state to cross state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

ARTICLE II--Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and any other persons deemed necessary for the transportation, supervision, care, security and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(2) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

(3) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(4) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(5) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(6) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

ARTICLE III--Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide, for matters as may be necessary and appropriate, to fix the obligations, responsibilities and rights of the sending and receiving state.

(2) The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

ARTICLE IV--Procedures and Rights

(1) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(2) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, that has entered into a contract pursuant to this compact, decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact

through an appointed liaison.

(3) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(4) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(5) Cooperative efforts shall be made by corrections officers and personnel of the receiving state, located at a fire camp, with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(6) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state, as may be members of a fire suppression unit of the receiving state.

(7) Further, in emergent situations, a sending state shall be granted authority and all the protections of any compact under this chapter to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

ARTICLE V--Acts Not Reviewable in Receiving State; Extradition

(1) If, while located within the territory of a receiving state, there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing, within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in any compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI--Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by Idaho and any other state.

ARTICLE VII--Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the same and pro-

viding for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

ARTICLE VIII--Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement or other agreement that a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE IX--Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of such compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Approved March 18, 1993.

CHAPTER 81
(S.B. No. 1072)

AN ACT

RELATING TO ANNEXATION TO EXISTING MOSQUITO ABATEMENT DISTRICTS; AMENDING SECTION 39-2806, IDAHO CODE, TO PROVIDE FOR AN ALTERNATE METHOD BY WHICH ANNEXATION TO AN EXISTING MOSQUITO ABATEMENT DISTRICT MAY BE ACCOMPLISHED, AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-2806, Idaho Code, be, and the same is hereby amended to read as follows:

39-2806. ANNEXATION TO ABATEMENT DISTRICTS. Contiguous territories may be annexed to organized mosquito abatement districts upon petition of a majority of the legal voters in the territory seeking annexation and of the owners of more than half ~~(1/2)~~, by assessed value, of the taxable property in such territory, or by written request for annexation of a designated area, submitted to the trustees of the existing mosquito abatement district and signed by all members of the board of county commissioners in which county the territory seeking annexation is located. Upon receiving this petition or written

request, the trustees of the existing mosquito abatement district must submit the question of annexation to the legal voters of the district within sixty (60) days at a regular or special election.

Approved March 18, 1993.

CHAPTER 82
(S.B. No. 1080)

AN ACT

RELATING TO THE SERVICES OF RETIRED MAGISTRATES; AMENDING SECTION 1-2221, IDAHO CODE, TO PROVIDE THAT A MAGISTRATE WHO VOLUNTARILY LEAVES FULL-TIME JUDICIAL EMPLOYMENT PRIOR TO ELIGIBILITY FOR RETIREMENT MAY BE ASSIGNED TO SIT AS A MAGISTRATE JUDGE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-2221, Idaho Code, be, and the same is hereby amended to read as follows:

1-2221. SERVICES OF RETIRED MAGISTRATES. Any retired magistrate, while he remains capable, upon compliance with chapter 4, title 59, Idaho Code, may hold court in the magistrates division of any district court of any county at the request of the administrative judge of the judicial district in which such court is located and upon the approval by the chief justice of the Supreme Court, and upon such request and approval, such retired magistrate may serve and hold court as requested.

During the period that any such retired magistrate is serving and holding court pursuant to this section, he shall be entitled to receive all of his regular retirement benefits under the public employee retirement system of Idaho together with an additional sum as compensation for his services sufficient to amount to an aggregate sum of retirement benefits and additional compensation so as to be equal to the current salary of the judicial office from which such magistrate has retired. Such additional compensation, above the retirement benefits accruing to such retired magistrate, shall be paid out of and from the appropriation for the magistrates division.

Any magistrate who voluntarily leaves full-time judicial employment prior to eligibility for retirement under the provisions of chapter 13, title 59, Idaho Code, may, while he remains capable, upon compliance with the provisions of chapter 4, title 59, Idaho Code, sit as a judge of the magistrates division of the district court in any county upon the request and order of the chief justice. When so serving, any magistrate judge not eligible for retirement under the public employee retirement system of the state of Idaho shall receive such compensation and expenses as may be authorized by the Supreme Court; provided, however, that such compensation shall not exceed the current salary of the judicial office vacated by such magistrate judge. Any period of service so rendered by a magistrate judge not eligible for

retirement under the public employee retirement system of the state of Idaho shall not in any way be computed for additional retirement benefits, and the state auditor shall not receive or deduct any sum from the salary of any such magistrate judge for such services, for transfer to the public employee retirement fund.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 83
(S.B. No. 1081, As Amended)

AN ACT

RELATING TO THE REMOVAL OF CIVIL COURT ACTIONS FROM ONE COUNTY TO ANOTHER COUNTY; AMENDING SECTION 5-408, IDAHO CODE, TO PROVIDE THAT THE EXPENSES OF THE ACTION SHALL BE PAID BY THE COUNTY FROM WHICH THE ACTION HAS BEEN TRANSFERRED; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-408, Idaho Code, be, and the same is hereby amended to read as follows:

5-408. TRANSMISSION OF PAPERS -- COSTS OF FILING PAPERS ANEW -- JURISDICTION IN NEW VENUE -- PAYMENT OF COUNTY EXPENSES. (1) When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the clerk of the court to which it is transferred. Any fee therefor as provided by law shall be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has and exercises over the same like jurisdiction as if it had been originally commenced therein.

(2) When an action is transferred from a county because there is reason to believe that an impartial trial cannot be had therein, or that the convenience of witnesses and the ends of justice would be promoted by the transfer, the costs and expenses accruing upon such removal and trial are a charge against the county from which the action was removed. The clerk of the court in the county to which the action is removed must certify the amount of said expenses to the auditor of the proper county, which must be allowed and paid as other county charges.

SECTION 2. This act shall be in full force and effect on and after July 1, 1993, and shall apply to costs and expenses incurred after this date.

Approved March 18, 1993.

CHAPTER 84
(S.B. No. 1083)

AN ACT

RELATING TO JUVENILE JUSTICE; AMENDING SECTION 16-1832, IDAHO CODE, TO DELETE LANGUAGE PROVIDING THAT A DISCHARGE OF A YOUTH OFFENDER BY THE DEPARTMENT OF HEALTH AND WELFARE SHALL BE A COMPLETE RELEASE OF ALL PENALTIES INCURRED BY ADJUDICATION OF THE OFFENSE FOR WHICH THE YOUTH OFFENDER WAS COMMITTED AND TO PROVIDE THAT THE DISCHARGE SHALL BE ONLY OF THAT PORTION OF THE ORDER OF DISPOSITION OR ADJUDICATION OR ORDER COMMITTING THE YOUTH TO THE CUSTODY OF THE DEPARTMENT OF HEALTH AND WELFARE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-1832, Idaho Code, be, and the same is hereby amended to read as follows:

16-1832. DISCHARGE. A youth offender may be discharged at any time from the jurisdiction of the department by written order of the department upon a finding that no further purpose would be served by secure confinement or supervision in a community setting. Discharge shall be in accordance with policies approved by the board of health and welfare. The discharge shall be ~~a complete release of all penalties incurred by adjudication of the offense for which a youth offender was committed~~ only of that portion of the order of disposition or adjudication committing the youth to the custody of the department of health and welfare. All other penalties imposed by the dispositioning court shall remain in full force and effect unless and until terminated by the dispositioning court.

Approved March 18, 1993.

CHAPTER 85
(S.B. No. 1084)

AN ACT

RELATING TO CRIMINAL OFFENSES INVOLVING BANKS; REPEALING SECTIONS 26-1204, 26-1205 AND 26-1209, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 26-1204, 26-1205 and 26-1209, Idaho Code, be, and the same are hereby repealed.

Approved March 18, 1993.

CHAPTER 86
(S.B. No. 1085)

AN ACT

RELATING TO CRITERIA FOR PLACING A DEFENDANT ON PROBATION OR IMPOSING IMPRISONMENT; AMENDING SECTION 19-2521, IDAHO CODE, TO PROPERLY DESIGNATE THE SECTION AND TO CORRECT TYPOGRAPHICAL ERRORS IN FACTORS THAT SHALL BE ACCORDED WEIGHT IN FAVOR OF AVOIDING A SENTENCE OF IMPRISONMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2521, Idaho Code, be, and the same is hereby amended to read as follows:

19-252~~0~~1. CRITERIA FOR PLACING DEFENDANT ON PROBATION OR IMPOSING IMPRISONMENT. (1) The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) A lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) Imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) The defendant is a multiple offender or professional criminal.

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of avoiding a sentence of imprisonment:

(a) The defendant's criminal conduct neither caused nor threatened harm;

(b) The defendant did not contemplate that his criminal conduct would cause or threaten harm;

(c) The defendant acted under a strong provocation;

(d) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, ~~through~~ though failing to establish a defense;

(e) The victim of the defendant's criminal conduct induced or facilitated ~~it's~~ the commission of the crime;

(f) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that was sustained; provided, however, nothing in this section shall prevent the appropriate use of imprisonment and restitution in combina-

tion;

(g) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) The defendant's criminal conduct was the result of circumstances unlikely to recur;

(i) The character and attitudes of the defendant indicate that the commission of another crime is unlikely.

(3) When a person who has been convicted of a crime is not sentenced to imprisonment, the court may place the defendant on probation if the supervision, guidance, assistance or direction is needed that the probation service can provide.

Approved March 18, 1993.

CHAPTER 87
(S.B. No. 1086)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-2407, IDAHO CODE, TO PROVIDE THAT AN APPLICATION FOR A NEW TRIAL MUST BE MADE WITHIN THE TIME PROVIDED BY THE IDAHO CRIMINAL RULES UNLESS THE COURT OR JUDGE EXTENDS THE TIME.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2407, Idaho Code, be, and the same is hereby amended to read as follows:

19-2407. TIME FOR APPLICATION. The application for a new trial may be made before or after judgment; and must be made within ~~fourteen (14) days after verdict,~~ the time provided by the Idaho criminal rules unless the court or judge extends the time.

Approved March 18, 1993.

CHAPTER 88
(S.B. No. 1087)

AN ACT

RELATING TO PROCEEDINGS FOR THE TERMINATION OF THE PARENT AND CHILD RELATIONSHIP; AMENDING SECTION 16-2009, IDAHO CODE, TO ELIMINATE THE REFERENCE TO COMMITMENT OF THE MENTALLY ILL UNDER IDAHO'S CIVIL COMMITMENT LAW AS THE BURDEN OF PROOF, AND TO CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-2009, Idaho Code, be, and the same is

hereby amended to read as follows:

16-2009. HEARING. Cases under this act shall be heard by the court without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. Stenographic notes or mechanical recording of the hearing shall be required. The general public shall be excluded and only such persons admitted whose presence is requested by any person entitled to notice under the provisions of section 16-2007, Idaho Code, or as the judge shall find to have a direct interest in the case or in the work of the court; provided that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent. The court may require the presence of witnesses deemed necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to section 16-2007, Idaho Code, shall not be required to appear at the hearing.

The parent or guardian ad litem shall be notified as soon as practicable after the filing of a petition and prior to the start of a hearing of his right to have counsel, and if counsel is requested and the parent or guardian is financially unable to employ counsel, counsel shall be provided. The prosecuting attorneys of the several counties shall represent the department at all stages of the hearing.

The court's finding with respect to grounds for termination shall be based upon clear and convincing evidence under rules applicable to the trial of civil causes, provided that relevant and material information of any nature, including that contained in reports, studies or examinations, may be admitted and relied upon to the extent of its probative value. When information contained in a report, study or examination is admitted in evidence, the person making such report, study or examination shall be subject to both direct and cross-examination. ~~Where--the--termination--is--sought-under-section-16-2005(d),-Idaho-Code,-evidence-of-the-alleged-condition-shall-be--no--less--than that--required--to-support-a-commitment-to-an-institution-for-the-mentally-ill-or-mentally-deficient-under-section-66-329,-Idaho-Code.~~

Approved March 18, 1993.

CHAPTER 89
(S.B. No. 1088)

AN ACT

RELATING TO COURTS; AMENDING SECTION 5-508, IDAHO CODE, TO PROVIDE THAT THE COURT SHALL DETERMINE WHETHER AN AFFIDAVIT IS SUFFICIENT AND SHALL ENTER AN ORDER FOR PUBLICATION OF THE SUMMONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-508, Idaho Code, be, and the same is hereby amended to read as follows:

5-508. SERVICE BY PUBLICATION -- AFFIDAVIT. When the person on

whom the service is to be made resides outside of the state, or has departed from the state, or cannot after due diligence be found within the state, or conceals himself therein to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier or secretary within this state, or where any persons are made defendant by the style and description of unknown owners, or unknown heirs or unknown devisees of any deceased person and the names of such unknown owners or heirs or devisees are unknown to the complainant in the action, and such facts appear by affidavit to the satisfaction of ~~the clerk of~~ the court in which the suit is pending, and it also appears by the verified complaint on file that a cause of action exists against defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, ~~such clerk~~ the court may make an order for the publication of the summons, or, if the address of the defendant outside of the state is known, may make an order that personal service of the summons may be made outside of the state in lieu of such publication; and an affidavit setting forth in ordinary and concise language any of the grounds as above set forth, upon which the publication of the summons is sought, shall be sufficient without setting forth or showing what efforts have been made or what diligence has been exerted in attempting to find the defendant.

Approved March 18, 1993.

CHAPTER 90
(S.B. No. 1089)

AN ACT
RELATING TO THE CLERK AND DEPUTY CLERK OF THE SUPREME COURT; REPEALING SECTIONS 1-401 AND 1-410, IDAHO CODE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 1-401 and 1-410, Idaho Code, be, and the same are hereby repealed.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 91
(S.B. No. 1094)

AN ACT
RELATING TO SCALING PRACTICES; AMENDING SECTION 38-1221, IDAHO CODE, TO PROVIDE THAT PROSECUTION FOR A MISDEMEANOR UNDER THE LOG SCAL-

ING LAW MUST BE COMMENCED WITHIN TWO YEARS AFTER ITS COMMISSION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 38-1221, Idaho Code, be, and the same is hereby amended to read as follows:

38-1221. COMMENCEMENT OF CIVIL ENFORCEMENT ACTIONS -- CRIMINAL ACTIONS AND PENALTIES AUTHORIZED -- DUTIES OF ATTORNEY GENERAL AND PROSECUTING ATTORNEYS. (a) Upon request of the board or the chairman, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions as provided in section 38-1220A, Idaho Code. In addition, when deemed by the chairman to be necessary, the chairman may retain private counsel to institute and prosecute civil enforcement actions as provided in section 38-1220A, Idaho Code.

(b) In addition to the above, any person who shall practice, or offer to practice log scaling in this state without being licensed, having a temporary permit or being an apprentice, in accordance with the provisions of this act or any rule, regulation, order or license issued or promulgated thereunder, or any person who shall attempt to use an expired or revoked certificate of registration or practice at any time during a period the board has suspended or revoked his certificate of registration, or any person who shall violate any of the provisions of this act or any rule, regulation, order or license issued or promulgated thereunder, shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500). A prosecution for a misdemeanor under this chapter must be commenced by the filing of the complaint or the finding of an indictment within two (2) years after its commission.

The attorney general of this state or any assistant designated by him shall act as legal advisor of the board; and all criminal actions for violations of the provisions of this act shall be prosecuted by the prosecuting attorney of the county or counties in which the violations of the act may be committed.

Approved March 18, 1993.

CHAPTER 92
(S.B. No. 1095)

AN ACT
RELATING TO RECORDING LUMBER MARKS; AMENDING SECTION 38-808, IDAHO CODE, TO PROVIDE FOR THE ADMINISTRATION OF LOG BRAND REGISTRATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 38-808, Idaho Code, be, and the same is hereby amended to read as follows:

38-808. RECORDING ~~LUMBER MARKS~~ LOG BRANDS -- PENALTY. (1) Defini-

tions:

(a) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms and associations of persons.

(b) "Forest products." For the purposes of this section only, "forest products" means all products derived from trees including, but not limited to, sawlogs, veneer logs, poles, cedar products, pulp logs, fence posts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a processing mill or cut into cord wood, stove wood or hewn ties.

(c) "Log brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.

(2) Any owner of ~~logs or timber~~ forest products in the state of Idaho may use thereon any ~~mark~~ log brand, which may be applied as a stamped symbol, log brand or affixed tag, not ~~before recorded and used~~ currently registered by any other person in the state; but before any such ~~mark~~ log brand shall be used, it shall be the duty of such owner intending to use the same to cause a diagram, and a full and complete written description of his ~~mark~~ log brand, signed by him, to be ~~recorded--in~~ submitted on "Registration of Log Brands" forms to the office of the state board of scaling practices, who shall record the same upon receipt of a payment of ~~fifteen~~ twenty-five dollars ($~~15~~25.00), provided the ~~mark, diagram and description are~~ log brand is different from any other ~~mark, diagram or description recorded~~ log brand currently registered in that office. It shall be the duty of the person in charge of the state board of scaling practices office to keep a ~~book for such purpose of recording all assignments and transfers or marks so recorded~~ record of all registered log brands, which ~~book~~ record shall at all reasonable times be open to public inspection.

~~No person shall use any mark on any logs or timber until he shall have caused a diagram and description thereof to be so recorded, and no person shall use any mark previously recorded and used by another in the same district, unless authorized so to do by an instrument in writing executed and acknowledged by the owner of such mark, and recorded in the office or offices where said mark is recorded. No person shall mark any prize log. Any person offending against any of the provisions of this section shall forfeit one hundred dollars ($100), one half (1/2) of which shall be paid to the person prosecuting therefor.~~

(3) All applications for log brands and/or renewals shall be submitted to and approved by the state board of scaling practices prior to use. Such application shall be made on duplicate log brand registration forms and shall include a diagram or an impression of the log brand stamped on the form, a written description of the log brand and be signed by the person or the agent of the person. The state board of scaling practices may refuse to approve any log brand which is identical to or closely resembles a currently registered log brand. If approval is denied, the applicant will select another log brand. No person shall brand any prize log.

(4) The expiration date for all log brands registered prior to January 1, 1981, shall be February 28, 1994; the expiration date for all log brands registered from January 1, 1981, through December 31, 1985, shall be February 28, 1995; the expiration date for all log

brands registered from January 1, 1986 through December 31, 1989, shall be February 28, 1996; the expiration date for all log brands registered from January 1, 1990, through December 31, 1992, shall be February 28, 1997. Beginning January 1, 1993, renewals or newly approved registrations shall expire on February 28, five (5) years after the year of registration or renewal. Notification of expiration will be sent during the month of September of the year preceding the expiration date. A renewal fee of twenty-five dollars ($25.00) shall be charged each time a log brand is renewed by the same person.

(5) To assign ownership of a currently registered log brand, the current registered owner of the log brand shall file with the state board of scaling practices a signed and duly notarized instrument on forms provided by the board. Such forms shall specify the effective date of transfer, the assignee and the log brand to be assigned. A fee of twenty-five dollars ($25.00) shall be charged for each transfer. The transferred log brand will be issued a new registration number and shall expire February 28, five (5) years after the year of the transfer.

Any failure to renew a log brand as required by law shall be deemed an abandonment of same. Abandoned or canceled log brands shall not be reissued for a period of one (1) year. Any other person may be at liberty to adopt or use the abandoned log brand; but the other person shall not claim or use it until after it has been registered in the other person's own name as provided by this statute.

(6) Failure to comply with the provisions of section 38-808, Idaho Code, shall be deemed a violation of the log brand law. Upon request of the state board of scaling practices or its chairperson, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions. In addition, when deemed by the board to be necessary, the board may retain private counsel to institute and prosecute civil enforcement actions. Any person who has been determined to have violated the provision(s) of this act shall be liable for any expense, including reasonable attorney's fees, incurred by the state in enforcing the act. Any violation of section 38-808, Idaho Code, shall be deemed a misdemeanor and any person, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

Approved March 18, 1993.

CHAPTER 93
(S.B. No. 1121)

AN ACT

RELATING TO FOREST LANDS; AMENDING SECTION 38-101, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 38-111, IDAHO CODE, TO REVISE ASSESSMENTS FOR PRIVATE OWNERS OF FOREST LAND, AND TO CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 38-101, Idaho Code, be, and the same is hereby amended to read as follows:

38-101. DEFINITIONS. As used in this chapter, the following terms are defined as follows:

(a) "Forest land" means any land which has upon it sufficient brush or flammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or removal of forest products, to constitute a fire menace to life (including animal) or property.

(b) "Range land" means any land which is not cultivated and which has upon it native grasses or other forage plants making it best suited for grazing of domestic and wild animals and which land is adjacent to or intermingled with forest land.

(c) "Person" shall mean and include any person or persons, and any corporation, firm or other entity.

(d) "Everyone" or "anyone" shall mean any and all person or persons, corporations, firms, or other entities.

(e) "State" shall mean the state of Idaho.

(f) "Board" shall mean the state board of land commissioners.

(g) "State forester" as used in this chapter and wherever else it is used in the Idaho Code, shall mean the director of the ~~the~~ department of lands or his duly authorized delegates or employees, including fire wardens and deputy fire wardens.

(h) "Fire warden" or "forest warden" shall mean duly appointed fire wardens or their deputies.

(i) "Forest products" shall mean any ties, logs, poles, posts, cordwood, pulpwood or other timber products.

(j) "Slashing areas" shall mean areas upon which, after cutting of the trees or brush preparatory to clearing, or after the cutting of any forest products, sufficient flammable material remains upon the ground as a result of such operations to constitute a menace to life or property.

(k) "Slash" or "slashing" shall mean brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land, which are four (4) inches ~~(4")~~ and under in diameter.

(l) "Forest fire" as used in this chapter means any fire burning uncontrolled on any land covered wholly or in part by timber and/or other potential forest products, slash, brush, or other flammable vegetation.

(m) "Range fire" means any fire burning uncontrolled on any range land.

(n) Whenever the term "state cooperative board of forestry" is used in any other section of the Idaho Code, it shall be construed to mean the state board of land commissioners.

(o) "Administrator" means the head of a division organized within the department of lands.

(p) "Community forestry" or "urban forestry" means the management of the trees and associated vegetation in rural and urban communities.

(q) "Improved lot or parcel" means forest land upon which a residential structure exists as determined by the department. In making such determination, the department may consult with the county asses-

sor.

SECTION 2. That Section 38-111, Idaho Code, be, and the same is hereby amended to read as follows:

38-111. PROTECTION BY OWNER -- ASSESSMENTS -- BUDGET OF PROTECTIVE DISTRICTS. Every owner of forest lands in the state shall furnish or provide therefor, throughout the closed season, protection against the starting, existence or spread of fires thereon, or therefrom, in conformity with reasonable rules and standards for adequate protection, to be established by the state board of land commissioners. An owner of forest lands who maintains a membership in good standing in a forest protective association operating under agreement with the state board of land commissioners, which association maintains a standard of protection approved by said board and who pays the assessments to the association in the amounts required ~~by~~ in this section, shall be deemed to have fully complied herewith. In the event the owner of any forest land shall neglect or fail to furnish the protection required ~~by~~ in this section, the director of the department of lands shall provide such patrol and protection therefor at actual cost to the owner of forest lands. For private owners of forest lands whose total acres of forest lands are twenty-~~five~~six (25~~6~~) acres or ~~fewer,-the-minimum assessment-per-year~~ more, this cost shall ~~be-a-sum--of--eight--dollars and--seventy~~ not exceed forty-five cents (~~$8.75~~45¢)~~,-and-for~~ an acre per year. For private owners of forest lands whose total acres of forest lands are twenty-~~six~~five (26~~5~~) acres or ~~more,-this-cost-shall--not exceed--thirty-five--cents--(35¢)--an-acre-per-year~~ fewer, the minimum assessment per year shall be equal to the per acre cost multiplied by twenty-five (25).

In addition to any other assessment prescribed in this chapter, a surcharge shall be levied and assessed in the amount of ten dollars ($10.00) for each improved lot or parcel, to defray the cost of fire suppression on forest land caused by the existence of the improvements.

In the event an assessment is made in an amount less than the maximum hereinbefore provided, and an actual loss occurs which exceeds the amount budgeted and for which assessments have been made, the director of the department of lands, with the approval of the board, may require an additional assessment to be made and paid, which together with the original assessment shall not exceed the maximum assessment set forth ~~above~~ in this section. Such additional assessment shall be levied and collected in the same manner as herein provided for the collection of such original assessments. The liability provided in this section shall be calculated for each forest protection district or association separately, and shall be calculated solely upon the charges assignable to fire control or presuppression of fires within each district or association.

Each forest protective association actively engaged in forest protection under agreement with the state board of land commissioners shall each year prepare in detail, a budget of all estimated operating costs for the next calendar year and shall submit this budget to the board for approval before June 30 of the current year.

Except for the provisions of section 38-122, Idaho Code, and cases

of proven negligence by the landowner or his agent, no other charges or assessments for fire protection shall be made or assessed or collected from those forest landowners participating as provided herein.

Approved March 18, 1993.

CHAPTER 94
(S.B. No. 1123)

AN ACT

RELATING TO TAXPAYERS' RIGHTS; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE LIMITS ON THE EXEMPTION FROM DISCLOSURE OF CERTAIN TAXPAYER RECORDS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3044, IDAHO CODE, TO PROVIDE FOR RECORDING OF TAX ASSESSMENTS; AMENDING SECTION 63-3045, IDAHO CODE, TO PROVIDE TIME LIMITS FOR FILING PROTESTS OF TAX DEFICIENCIES OR TAX REDETERMINATIONS, TO PROVIDE FOR THE CONTENT OF A NOTICE, TO PROVIDE FOR A RIGHT TO REQUEST A HEARING, TO PROVIDE THAT A HEARING MAY BE CONDUCTED BY ELECTRONIC MEANS, TO PROVIDE THAT A TAXPAYER MAY BE REPRESENTED, AND TO PROVIDE FOR ESTABLISHING THE RATE OF INTEREST UPON DEFICIENCIES, OVERPAYMENTS, OR REFUNDS; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3045B, IDAHO CODE, TO PROVIDE TIME LIMITS FOR FINAL DECISIONS OF THE TAX COMMISSION; AMENDING SECTION 63-3049, IDAHO CODE, TO PROVIDE TIME LIMITS FOR JUDICIAL REVIEW, TO PROVIDE FOR SECURING THE PAYMENT OF TAXES, AND TO PROVIDE FOR AWARD OF COSTS FOR FRIVOLOUS OR GROUNDLESS PROCEEDINGS; AMENDING SECTION 63-3055, IDAHO CODE, TO PROVIDE FOR RELEASE OF ERRONEOUS LIENS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3065, IDAHO CODE, TO PROVIDE TIME LIMITS; AMENDING SECTION 63-3076, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE PENALTY FOR DIVULGING TAX INFORMATION; AMENDING SECTION 63-3629, IDAHO CODE, TO PROVIDE PROPER REFERENCES; AMENDING SECTION 63-3631, IDAHO CODE, TO PROVIDE PROPER REFERENCES, AND TO RENUMBER; AMENDING SECTION 63-3632, IDAHO CODE, TO PROVIDE FOR INTEREST UPON SALES TAX DEFICIENCIES; AMENDING SECTION 63-3812, IDAHO CODE, TO PROVIDE TIME LIMITS; AMENDING SECTION 63-3816, IDAHO CODE, TO PROVIDE TIME LIMITS; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 40, TITLE 63, IDAHO CODE, TO PROVIDE FOR TAXPAYERS' BILL OF RIGHTS, TO PROVIDE DEFINITIONS, TO PROVIDE FOR ACQUISITION OF LOCATION INFORMATION, TO PROVIDE GUIDELINES FOR COMMUNICATIONS IN CONNECTION WITH TAX COLLECTIONS, TO PROHIBIT HARASSMENT OR ABUSE OF TAXPAYERS, TO PROHIBIT FALSE OR MISLEADING REPRESENTATIONS, TO PROHIBIT UNFAIR PRACTICES, TO PROVIDE FOR APPLICATION OF SINGLE PAYMENTS ON MULTIPLE TAX OBLIGATIONS, TO ALLOW RECORDING OF INTERVIEWS, TO PROVIDE FOR INSTALLMENTS, TO PROHIBIT QUOTAS, TO PROVIDE FOR CIVIL LIABILITY; AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-340, Idaho Code, be, and the same is

hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature

for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(37) Records containing information obtained by the manager of

the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(3~~7~~8) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(3~~7~~9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

SECTION 2. That Section 63-3044, Idaho Code, be, and the same is hereby amended to read as follows:

63-3044. DEFICIENCY IN TAX. (1) As used in this act in respect of a tax imposed by this act the term "deficiency" means:

(a) The amount by which the tax imposed by this act exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or,

(b) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts pre-

viously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or,

(c) Any amount of tax which is due and unpaid.

(2) A tax assessment shall be made by recording the liability of the taxpayer in the office of the tax commission in accordance with rules prescribed by the tax commission. Upon request of the taxpayer, the tax commission shall furnish the taxpayer a copy of the record of assessment. No tax commission activities to enforce collection of tax may be conducted, nor may a proceeding to collect a tax be instituted, until assessment of the tax has been made in accordance with the provisions of this section. Taxes may be assessed immediately upon receipt of a tax return signed by the taxpayer showing the taxes due.

SECTION 3. That Section 63-3045, Idaho Code, be, and the same is hereby amended to read as follows:

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this ~~act~~ title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within ~~thirty (30)~~ sixty-three (63) days after such notice is mailed ~~(not counting Sunday as the thirtieth day)~~, the taxpayer may, at his option, file a protest in writing with the state tax commission ~~or may file a complaint with the district court in Ada County or the county in which the taxpayer resides~~ and obtain redetermination of the deficiency~~; but such complaint may be filed with the district court only upon payment of the tax deficiency asserted or filing a bond in accordance with the provisions of section 63-3049, Idaho Code.~~

(b) If the taxpayer files a protest with the tax commission within the period set forth in paragraph (1)(a) of this subsection, and such protest does not comply with the regulations of the tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the tax commission shall notify the taxpayer, in the same manner as set forth in paragraph (1)(a) of this subsection, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said notice to perfect his protest.

(c) No assessment of a deficiency in respect of the tax imposed by this ~~act~~ title, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ~~thirty (30) day~~ time periods, nor, if a protest has been filed, until the decision of the state tax commission becomes final, as provided in section 63-3045B, Idaho Code. If the present address of the taxpayer is not known, the notice shall be mailed

to his last known address.

(2) Following a protest, the taxpayer has the right to request a hearing. The purpose of the hearing is to discuss the deficiency determination and the taxpayer's protest with a hearing officer. The meeting shall be held informally and evidence shall be freely admitted regardless of the rules of evidence.

(3) Any hearing conducted under the provisions of this section may be conducted, in whole or in part, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) A taxpayer has the right to be represented by, or be accompanied by, any person of his choice in any proceeding before the tax commission. If the taxpayer is not present at a proceeding, the representative of that taxpayer must be designated in writing by the taxpayer in a manner acceptable to the tax commission.

(~~b~~5) If the taxpayer does not file a protest with the state tax commission ~~or--an--action--in-the-district-court~~ within the time prescribed in ~~the-first~~ subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.

(~~c~~6) (a) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate ~~of-twelve-per-cent-(12%)~~ per annum determined under the provisions of paragraph (b) of this subsection from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carry back of a net operating loss, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss arises.

(b) By November 1 of each year, the tax commission shall fix the rate of interest due for the succeeding calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund. The rate of interest, rounded to the nearest whole number, shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the mid-term federal rate as it applies on October 15 of that year.

SECTION 4. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3045B, Idaho Code, and to read as follows:

63-3045B. FINAL DECISIONS OF THE COMMISSION. (1) If a taxpayer does not file a protest within the sixty-three (63) day period allowed, the notice of deficiency of the tax commission becomes final on the day following the end of the protest period.

(2) If a taxpayer files a protest, but does not perfect the protest, request a hearing, or does not submit additional evidence or documentation, or does not request additional time in which to

respond, the notice of deficiency of the tax commission becomes final on the twenty-ninth day following the date the tax commission notified the taxpayer that the protest was not perfected, except that the tax commission may reduce the amount of the deficiency during the twenty-nine (29) day period.

(3) If the provisions of subsection (1) or (2) of this section are not applicable, a final decision of the tax commission must be rendered within one hundred eighty (180) days:

(a) After a request in writing from the taxpayer for a final decision on that issue; if the taxpayer requests such a decision, the tax commission may refuse to accept additional evidence or documentation or refuse to allow an appearance at any proceeding with the commission or any representative of the commission during such one hundred eighty (180) day period.

(b) Following the conclusion of any proceeding before one (1) or more tax commissioners or any representative of the commission, and the taxpayer has not requested or received any extension of time to present additional evidence or testimony.

(4) A final decision may be held in abeyance, notwithstanding the requirements of subsection (3) of this section, with the prior approval in writing of the taxpayer.

(5) If a final decision of the tax commission is not rendered within the time limits established by subsection (3) of this section, the notice of deficiency shall be null and void ab initio, with prejudice.

(6) A final decision of the tax commission shall be issued in writing and mailed or served upon the taxpayer within the time limits set forth herein. The final written decision of the tax commission shall, one hundred twenty (120) days after the date of the final written decision, be available for public inspection and copying pursuant to the provisions of section 9-338, Idaho Code, except:

(a) The taxpayer's name, address, taxpayer identification number, social security number, permit number, or other identifying information shall be removed from the final written decision of the tax commission that is made available to the public; and

(b) Any proprietary or other identifying information contained in the written decision that the taxpayer requests be excised shall be excised by the tax commission in the final written decision made available to the public. The taxpayer must make such request in writing before ninety-one (91) days have elapsed after the date of the final decision.

(7) The tax commission shall label each written decision with a unique identification number and shall keep a list containing each decision number and the date of issuance, as excised in accordance with the provisions of this section. A decision shall serve as precedent for the tax commission in future protest determinations unless court decisions, changes in the Idaho Code, or changes in applicable regulations overrule, supersede, modify, distinguish, or otherwise make inapplicable the written decision of the tax commission.

SECTION 5. That Section 63-3049, Idaho Code, be, and the same is hereby amended to read as follows:

63-3049. JUDICIAL REVIEW. (a) Redetermination by the state tax commission may be reviewed in the district court for Ada county or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer against the state tax commission within ~~thirty~~ ninety-one (~~30~~91) days after the receipt of notice of the decision of the state tax commission denying, in whole or in part, any protest of the taxpayer or, within the same ~~thirty-(30)-day~~ period, by filing an appeal with the board of tax appeals. Upon the serving of summons upon the state tax commission the case shall proceed as other civil cases but may be heard by the judge in chambers. If the case is appealed to the board of tax appeals, the hearing before that body shall proceed as set forth in the act creating such board. If the court finds that any tax is due, it shall enter judgment for such tax, including any interest or penalties that may also be due and owing, against the taxpayer. Any taxes, penalties or interest paid, found by the court to be in excess of that which can be legally assessed, shall be ordered refunded to the taxpayer with interest from the time of payment. In the case of sales or use tax and corporate income tax decisions by the state tax commission, when the amount in dispute at the time the notice of deficiency determination/overassessment is issued exceeds twenty-five thousand dollars ($25,000), no appeal to the board of tax appeals shall be allowed.

(b) Before ~~any--such--appeal--may-be-filed-by-the~~ a taxpayer may seek review by the district court or the board of tax appeals, the taxpayer shall secure the payment of the tax or deficiency as assessed~~,-together-with-interest-and-penalties--thereon,--or--in--lieu thereof--file-with-the-clerk-of-the-court-sufficient-and-adequate-bond in-double-the-amount-of-the-tax-penalty-and-interest-claimed-due--from the--taxpayer,-executed-by-a-surety-company-licensed-and-authorized-to do-business-in-the-state-of-Idaho,-conditioned-upon-the-payment-of-any tax,-penalty-and-interest-that-may-be-found-due-by-the-court~~ by depositing cash with the tax commission in an amount equal to twenty percent (20%) of the tax, penalty and interest. In lieu of the cash deposit, the taxpayer may deposit any other type of security acceptable to the tax commission.

No act, order or proceeding of the tax commission shall be valid until after the time allowed for taking such court action has expired or such court action is finally determined.

(c) Any party to the proceedings may appeal to the Supreme Court from the judgment of the district court under the rules and regulations prescribed for appeals. If the appeal be taken by the state tax commission, ~~he~~ it shall not be required to give any undertaking or to make any deposits to secure the cost of such appeal or to secure the payment of any amounts ordered refunded by the court.

(d) Whenever it appears to the court that:

(1) Proceedings before it have been instituted or maintained by a party primarily for delay; or

(2) A party's position in such proceeding is frivolous or groundless; or

(3) A party unreasonably failed to pursue available administrative remedies;

the court, in its discretion, may require the party which did not pre-

vail to pay to the prevailing party costs, expenses and attorney's fees.

SECTION 6. That Section 63-3055, Idaho Code, be, and the same is hereby amended to read as follows:

63-3055. RELEASE OR SUBORDINATION OF INCOME TAX LIEN. (1) The state tax commission may at any time release all or any portion of the property subject to the lien from the lien, or it may subordinate the lien to other liens if it determines:

(a) ~~t~~That the taxes, penalties or interests are sufficiently secured by a lien on other property of the taxpayer~~,~~; or

(b) ~~t~~That the release or subordination of the lien will not endanger or jeopardize the collection of such taxes, penalties or interest~~,~~; or

(c) ~~t~~That a surety bond or securities satisfactory to secure deposits of public funds have been posted, deposited or pledged with the state tax commission in an amount sufficient to secure the payment of such taxes, penalties, or interest~~,~~; or

(d) ~~a~~All or a part of such taxes, penalties or interest have been paid.

A certificate by the state tax commission to the effect that any property has been released from the lien herein provided for, or that such lien has been subordinated to other liens, shall be conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

(2) If the tax commission determines that the filing of the notice of any lien was erroneous, the tax commission shall expeditiously, and, to the extent practicable, within fourteen (14) days after such determination, issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

(3) Where an officer or employee of the tax commission knowingly or negligently fails to release a notice of lien, a taxpayer may bring an action in district court seeking direct economic damages and costs. A taxpayer must first notify the tax commission that a release was not issued timely.

SECTION 7. That Section 63-3065, Idaho Code, be, and the same is hereby amended to read as follows:

63-3065. JEOPARDY ASSESSMENTS. (a) If the tax commission finds that a taxpayer is about to depart from the state of Idaho or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said taxes as is unpaid, whether

or not the time otherwise allowed by law for filing returns and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the tax commission, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(b) Collection procedures may be instituted immediately; however, any taxpayer deeming himself aggrieved by any act of the tax commission pursuant to the provisions of this section may, within ~~thirty~~ twenty-eight (~~30~~28) days of receipt of said notice, petition the tax commission for a redetermination or commence action for refund or redetermination upon payment of the tax together with interest and penalty or upon filing a bond in ~~double~~ the amount of the assessment.

(c) A taxpayer who is not in default in making any return or paying any taxes assessed under this chapter may furnish to the state of Idaho under regulations to be prescribed by the tax commission, security approved by the tax commission that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The tax commission may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section.

(d) If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the tax commission shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(e) In the case of a bona fide resident of the state of Idaho about to depart from the state of Idaho the tax commission may, at its discretion, waive any or all of the requirements placed upon the taxpayer by this section.

(f) If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax twenty-five per cent (25%) of the total amount of the tax or deficiency in the tax.

(g) If the taxpayer owing tax is not within this state or has departed from the state, or has property or is employed outside of the state and ignores all demands for payment, the tax commission is authorized to employ the services of any qualified collection agency or attorney and to pay fees for such services out of moneys recovered.

SECTION 8. That Section 63-3076, Idaho Code, be, and the same is hereby amended to read as follows:

63-3076. PENALTY FOR DIVULGING INFORMATION. Except as provided in section 63-3045B, Idaho Code:

(a) No commissioner, deputy, or any clerk, agent or employee, or any centralized state computer facility employee or any person formerly employed in any such position shall divulge or make known to any person in any manner any information whatsoever obtained directly or indirectly by him in the discharge of his duties, or permit any income

return or copy thereof, or any paper or book so obtained, to be seen or examined by any person except as provided by law; provided, that in any action or proceeding brought for the collection, remission, cancellation or refund of the whole or any part of a tax imposed under the provisions of this act, or for enforcing the penalties prescribed for making false or fraudulent returns, any and all information contained in such returns may be furnished or made accessible to the officers or representatives of the state or county charged with the duty of prosecuting or defending the same, under such rules and regulations as the state tax commission shall prescribe; and all such returns and the statements and correspondence relating thereto may be produced in evidence in any action or proceeding, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such return.

(b) A copy of all or any portion of a federal return, or information reflected on such federal return, which may be attached to an Idaho return, or otherwise come into the possession of any commissioner, deputy, clerk, agent or employee, or any employee of a centralized state computer facility, shall not be disclosed in any manner whatsoever other than as authorized by the preceding subsection.

(c) Any officer, agent, clerk or employee violating any of the provisions of this section shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment for not more than five (5) years. Such officer, agent, clerk or employee upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of two (2) years thereafter.

SECTION 9. That Section 63-3629, Idaho Code, be, and the same is hereby amended to read as follows:

63-3629. DEFICIENCY DETERMINATIONS. (a) If the state tax commission is not satisfied with the return or returns of the tax, because of errors or omissions discovered in audits or in any other way, it may compute and determine the amount which is due upon the basis of facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession and assert a deficiency. One or more deficiency determinations may be made of the amount due for one or for more than one period. In making such determination, the state tax commission may offset overpayments against amounts due.

(b) If any person fails to make a return, the state tax commission shall make an estimate of the amount of sales or use subject to tax by this act, and shall in this manner determine the amount of tax due from such person. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the state tax commission's possession or may come into its possession.

(c) The state tax commission shall give written notice of its determination and the amount of the deficiency, including any interest and penalties, to the person from whom such deficiency amount is due in the manner prescribed by section 63-3045, Idaho Code. ~~Such--notice~~

~~may--be--given--personally--or--by-mail-addressed-to-the-person-at-the address-furnished-to-the-state-tax-commission-and-as-it--appears--upon the-records-of-the-state-tax-commission.~~

SECTION 10. That Section 63-3631, Idaho Code, be, and the same is hereby amended to read as follows:

63-3631. REDETERMINATION. (~~a~~1) Any person against whom a deficiency determination is made under section 63-3629, Idaho Code, or any person directly interested, may petition for a redetermination within ~~thirty--(30)--days-after-service-upon-the-person-of-notice-thereof~~ the time period allowed by section 63-3045, Idaho Code. If a petition for redetermination is not filed within the ~~thirty-(30)-day~~ time period allowed, the determination becomes final ~~at--the--expiration--of--the period~~ as provided in section 63-3045B, Idaho Code.

~~(b)--If--a-petition-for-redetermination-is-filed-within-the-thirty (30)-day-period,-the-state-tax-commission-shall-reconsider-the--determination--and,--if--the-person-has-so-requested-in-his-petition,-shall grant-the-person-an-oral-hearing-and-shall-give--him--ten--(10)--days' notice--of--the-time-and-place-of-the-hearing-personally-or-by-mail-as provided-in-section-63-3629,-Idaho-Code.-The-state-tax-commission--may continue-the-hearing-from-time-to-time-as-may-be-necessary.~~

(~~c~~2) The state tax commission may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the state tax commission at or before the hearing.

(~~d~~3) A person petitioning for a redetermination under subsection (a) of this section may, in support of his petition, submit resale certificates as provided in section 63-3620 or section 63-3621, Idaho Code, or an exemption certificate as provided in section 63-3622, Idaho Code, only if such certificates are presented to the tax commission within ninety (90) days of the date of the notice of deficiency determination to which the petition relates.

SECTION 11. That Section 63-3632, Idaho Code, be, and the same is hereby amended to read as follows:

63-3632. ~~APPEALS~~--- INTEREST ON DEFICIENCIES. ~~(a)-When-a-determination-becomes-final-or-a-redetermination-is-made,-the-state-tax--commission--shall-give-notice-to-the-taxpayer-against-whom-the-determination-or-redetermination-is-made.-Within-thirty-(30)-days-of--the--date upon-which-the-notice-of-redetermination-is-mailed-or-served,-the-taxpayer-may,-at-his-option,-file-an-appeal-with-the-board-of-tax-appeals or-may-file-a-complaint-with-the-district-court-in-accordance-with-the provisions--of--section-63-3049,-Idaho-Code,-for-a-review-of-the-state tax-commission's-determination-or-redetermination.-No-assessment-of--a deficiency--in--respect-to-the-tax-imposed-by-this-act,-no-application of-any-security-pursuant-to-the-provisions-of-section--63-3625,--Idaho Code,--and--no--distraint--or--proceedings-in-court-for-its-collection shall-be-made,-begun-or-prosecuted-until-such-notice-has--been--mailed to--the--taxpayer,--nor--until--the-expiration-of-such-thirty-(30)-day period-after-notice-of-redetermination,-nor,-if--a--protest--has--been filed,-until-the-decision-of-the-state-tax-commission-becomes-final.~~

~~(b)--If--the--taxpayer--does-not-file-a-protest-with-the-state-tax commission-or-an-action-in-the-district-court--within--the--time--prescribed--in-the-first-subsection-of-this-section,-the-deficiency-shall be-assessed-and-shall-become-due-and-payable-upon--notice--and--demand from-the-state-tax-commission.~~

~~(c)~~ Interest upon any deficiency shall be assessed at the same time as the deficiency and shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate provided in section 63-3045, Idaho Code, from the date prescribed for the payment of the tax.

SECTION 12. That Section 63-3812, Idaho Code, be, and the same is hereby amended to read as follows:

63-3812. APPEAL FROM BOARD -- PAYMENT OF TAXES WHILE ON APPEAL. Whenever any taxpayer, assessor, the state tax commission or any other party appearing before the board of tax appeals is aggrieved by a decision of the board of tax appeals or a decision on a motion for rehearing, an appeal may be taken to the district court located in the county of residence of the affected taxpayer, or to the district court in and for the county in which property affected by an assessment is located. The appeal shall be taken and perfected in the following manner:

(a) The appellant shall cause notice specifying the grounds of appeal to be filed with the clerk of the board of tax appeals within ~~thirty~~ twenty-eight ~~(30)~~ (28) days after copy of the final decision of the board shall have been deposited in the mail. The grounds of appeal specified in such notice shall frame the issues for such appeal.

(b) Any record made in such matter together with the record of all proceedings shall be filed by the clerk with the district court of the proper county.

(c) Appeals shall be heard and determined by the court without a jury in a trial de novo on the issues. The court may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.

(d) Nothing in this section shall be construed to suspend the payment of taxes pending any appeal, except that any privileges as to bonds or other rights extended by the provisions of chapters 30 and 36, title 63, Idaho Code, shall not be affected. Payment of taxes while an appeal hereunder is pending shall not operate to waive the right to an appeal.

(e) Any final order of the district court under this section shall be subject to appeal to the supreme court in the manner provided by law.

SECTION 13. That Section 63-3816, Idaho Code, be, and the same is hereby amended to read as follows:

63-3816. METHOD OF ELECTION BY TAXPAYER TO PROCEED IN SMALL CLAIMS DIVISION -- ELECTION NOT REVOCABLE. A taxpayer may elect to proceed in the small claims division of the board of tax appeals by

filing a written notice thereof within twenty-one (20~~1~~) days of the date upon which notice that the board of tax appeals has received his appeal is mailed or served. If the taxpayer elects to proceed in the small claims division, the election may not be revoked and the taxpayer will have no further right of appeal to the district court under section 63-3812, Idaho Code, except as provided in section 63-3820, Idaho Code.

SECTION 14. That Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 40, Title 63, Idaho Code, and to read as follows:

CHAPTER 40
TAXPAYERS' BILL OF RIGHTS

63-4001. DEFINITIONS. As used in this chapter:

(1) "Commission" means the state tax commission.

(2) "Communication" means the conveying of information regarding a state tax obligation directly or indirectly to any person through any medium.

(3) "Location information" means a taxpayer's place of abode and his telephone number at such place, or his place of employment.

(4) "Revenue officer" means any agent, officer or employee of the state tax commission assigned to state tax collection or enforcement activities.

(5) "Tax obligation" means any legally owed tax liability, including tax, penalty and interest, or any tax form required to be filed.

63-4002. ACQUISITION OF LOCATION INFORMATION. Any revenue officer communicating with any person other than the taxpayer for the purpose of acquiring location information about the taxpayer shall:

(1) Identify himself as a revenue officer of the state and state that he is confirming or correcting location information concerning the taxpayer.

(2) Not state or declare that the taxpayer owes any taxes.

(3) Not communicate with any such person more than once unless requested to do so by such person or unless the revenue officer reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

(4) Not communicate by postcard except for postal locators sent to the U.S. postal service.

(5) After the tax commission is notified in writing that the taxpayer is represented with regard to the subject tax obligation and has knowledge of, or can readily ascertain, such representative's name and address, not communicate with any person other than that representative, unless the representative fails to respond within seven (7) days to communication from the revenue officer. Nothing shall prohibit the tax commission from copying to the taxpayer all written communications with the taxpayer's representative.

(6) Nothing in this section prohibits the tax commission from communication with the U.S. government, other states, or other state

or local government agencies regarding location information.

63-4003. COMMUNICATION IN CONNECTION WITH TAX COLLECTION. (1) Without the prior consent of the taxpayer or the express permission of a court of competent jurisdiction, a revenue officer may not communicate with a taxpayer in connection with the collection of any tax obligation:

(a) At any unusual time or place or a time or place known or which should be known to be inconvenient to the taxpayer. In the absence of knowledge of circumstances to the contrary, a revenue officer shall presume that the convenient time for communicating with a taxpayer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the taxpayer's location;

(b) If the tax commission has been notified in writing that the taxpayer is represented with respect to such tax obligation and has knowledge of, or can readily ascertain such representative's name and address, unless the representative fails to respond within seven (7) days to a communication with the taxpayer, except:

(i) To advise the taxpayer that the revenue officer's further efforts are being terminated;

(ii) To notify the taxpayer as required by law that the revenue officer may invoke specified remedies which are ordinarily invoked by such revenue officer; or

(iii) Where applicable, to notify the taxpayer that the revenue office intends to invoke a specified remedy;

but nothing shall prohibit the tax commission from copying to the taxpayer all written communications with the taxpayer's representative; or

(c) At the taxpayer's place of employment if the revenue officer knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving such communication.

(2) Except as provided in chapter 30, title 63, Idaho Code, or section 63-4002, Idaho Code, without the prior consent of the taxpayer, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a revenue officer may not communicate, in connection with the collection of any tax obligation, with any person other than the taxpayer, or his representative.

(3) If a taxpayer notifies a revenue officer in writing that the taxpayer refuses to pay a tax obligation or that the taxpayer wishes the revenue officer to cease further communication with the taxpayer, the revenue officer shall not communicate further with the taxpayer with respect to such tax obligation, except:

(a) To advise the taxpayer that the revenue officer's further efforts are being terminated;

(b) To notify the taxpayer as required by law that the revenue officer may invoke specified remedies which are ordinarily invoked by such revenue officer; or

(c) Where applicable, to notify the taxpayer that the revenue officer intends to invoke a specified remedy.

If such notice from the taxpayer is made by mail, notification shall be complete upon receipt.

63-4004. HARASSMENT OR ABUSE. A revenue officer may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a tax obligation. Without limiting the general application of the foregoing, the following conduct is a violation of the provisions of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of persons who allegedly refuse to pay tax obligations.

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(5) The placement of telephone calls without meaningful disclosure of the caller's identity except in connection with a criminal investigation.

63-4005. FALSE OR MISLEADING REPRESENTATIONS. A revenue officer may not use any false, deceptive, or misleading representations or means in connection with the collection of any tax obligation. Without limiting the general application of the foregoing, the following conduct is a violation of the provisions of this section:

(1) The false representation of the character, amount, or legal status of any tax obligation.

(2) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(3) The representation or implication that nonpayment of any tax obligation will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the state tax commission intends to take such action.

(4) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(5) The false representation or implication that a sale, referral, or other transfer of any interest in a tax obligation shall cause the taxpayer to:

(a) Lose any claim or defense to payment of the tax obligation; or

(b) Become subject to any practice prohibited by this chapter.

(6) The false representation or implication that the taxpayer committed any crime or other conduct in order to disgrace the taxpayer.

(7) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed tax obligation is disputed.

(8) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or which creates a false impression as to its source, authorization, or approval.

(9) The use of any false representation or deceptive means to

collect or attempt to collect any tax obligation or to obtain information concerning a taxpayer.

(10) Except in the case of criminal investigation and as otherwise provided for communications to acquire location information under the provisions of section 63-4002, Idaho Code, the failure to disclose clearly in all communications made to collect a tax obligation or to obtain information about a taxpayer, that the revenue officer is attempting to collect a tax obligation and that any information obtained will be used for that purpose.

(11) The false representation or implication that documents are legal process.

(12) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

63-4006. UNFAIR PRACTICES. A revenue officer may not use unfair or unconscionable means to collect or attempt to collect any tax obligation. Without limiting the general application of the foregoing, the following conduct is a violation of the provisions of this section:

(1) The collection of any amount, including interest, penalty, fee, charge, or expense incidental to the principal obligation, unless such amount is permitted by law.

(2) The acceptance by a revenue officer from any person of a check or other payment instrument postdated by more than five (5) days unless such person is notified in writing of the revenue officer's intent to deposit such check or instrument not more than ten (10) nor less than three (3) business days prior to such deposit.

(3) The solicitation by a revenue officer of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(a) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(b) There is no present intention to take possession of the property; or

(c) The property is exempt by law from such dispossession or disablement.

(7) Communicating with a taxpayer regarding a tax obligation by postcard.

63-4007. MULTIPLE TAX OBLIGATIONS. If any taxpayer owes multiple tax obligations and makes any single payment to any revenue officer with respect to such obligations, such revenue officer may not apply such payment to any obligation which is disputed by the taxpayer and, where applicable, shall apply such payment in accordance with the taxpayer's directions.

63-4008. RECORDING OF INTERVIEWS. (1) Any officer or employee of the tax commission in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) An officer or employee of the tax commission may record any interview described in subsection (1) of this section if such officer or employee:

(a) Informs the taxpayer of such recording prior to the interview; and

(b) Upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

(3) The provisions of this section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the tax commission.

63-4009. INSTALLMENT PAYMENTS. When a taxpayer becomes delinquent for payment of tax under this title, the taxpayer may request permission to make installment payments.

63-4010. QUOTAS PROHIBITED. The tax commission may not use monetary quotas or base the evaluation of a revenue officer on monetary collections.

63-4011. CIVIL LIABILITY. (1) Except as otherwise provided in this section, if any revenue officer fails to comply with any provision of this chapter with respect to any person, the tax commission is liable to that person in an amount equal to the sum of:

(a) Any actual damage sustained by that person as a result of such failure;

(b) (i) In the case of any action by an individual, such additional damages as the court may allow, but not exceeding one thousand dollars ($1,000); or

(ii) In the case of a class action, such amount for each named plaintiff as could be recovered under subsection (1)(a) of this section, and such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars ($500,000); and

(c) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(2) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In an individual action, the frequency and persistence of

noncompliance by the revenue officer, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(b) In any class action, the frequency and persistence of noncompliance by the revenue officer, the nature of such noncompliance, the number of persons adversely affected, and the extent to which the revenue officer's noncompliance was intentional.

(3) A revenue officer may not be held liable in any action brought pursuant to this chapter if the revenue officer shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) An action to enforce any liability created in this chapter may be brought in any court of competent jurisdiction within one (1) year from the date on which the violation occurs.

(5) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SECTION 15. Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993.

Approved March 18, 1993.

CHAPTER 95
(S.B. No. 1157)

AN ACT

RELATING TO TAIL LAMPS; AMENDING SECTION 49-906, IDAHO CODE, TO AUTHORIZE THE DISPLAY ON VEHICLES THIRTY YEARS OLD OR OLDER OF CERTAIN TAIL LAMPS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-906, Idaho Code, be, and the same is hereby amended to read as follows:

49-906. TAIL LAMPS. (1) Every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one (1) tail lamp mounted on the rear, which when lighted as required, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear. In the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. Every mentioned vehicle, other than a truck tractor,

registered in this state and manufactured or assembled after December 31, 1955, shall be equipped with at least two (2) tail lamps mounted on the rear, which when lighted as required, shall comply with the provisions of this section.

(2) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches.

(3) Any tail lamp shall be wired so to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(4) Nothing herein shall prohibit the display on any vehicle thirty (30) years or older of tail lamps containing a blue or purple insert lens not to exceed one (1) inch in diameter, provided the tail lamp or lamps otherwise comply with the requirements of this section.

Approved March 18, 1993.

CHAPTER 96
(S.B. No. 1211)

AN ACT

APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION IN ADDITION TO THE APPROPRIATION MADE BY SECTION 1, CHAPTER 125, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made by Section 1, Chapter 125, Laws of 1992, there is hereby appropriated to the Industrial Commission the following amount, to be expended for the designated program according to designated expense class from the listed fund for the period July 1, 1992, through June 30, 1993:

A. COMPENSATION:

FOR:	
Trustee and Benefit Payments	$5,200
FROM:	
Industrial Administration Fund	$5,200

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 97
(S.B. No. 1224)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF CORRECTION IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 291, LAWS OF 1992; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 291, Laws of 1992, there is hereby appropriated to the Department of Correction the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION AND INSTITUTIONAL SUPPORT:					
FROM:					
General Fund		$1,215,800		$1,274,200	$2,490,000
B. SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
Interagency Billing and Receipts Fund	$90,000	$ 81,000	$79,000		$ 250,000
C. POCATELLO WOMENS CORRECTIONAL CENTER:					
FROM:					
General Fund	$46,100	$ 39,100			$ 85,200

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 98
(S.B. No. 1232)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF ADMINISTRATION BY AMENDING SECTION 2, CHAPTER 207, LAWS OF 1992, APPROPRIATING MONEYS TO THE PERMANENT BUILDING FUND ADVISORY COUNCIL; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 2, Chapter 207, Laws of 1992, be, and the same is hereby amended to read as follows:

SECTION 2. There is hereby appropriated to the Department of Administration the following amounts, to be expended for the designated programs according to the designated expense classes from the listed accounts for the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. CENTRAL ADMINISTRATION:					
FROM:					
General Account	$ 112,700	$ 70,100			$ 182,800
Interagency Billing and Receipts Account	525,100	247,500			772,600
Employee Assistance Program Account	15,000	25,000			40,000
TOTAL	$ 652,800	$ 342,600			$ 995,400
II. GENERAL SERVICES:					
FROM:					
General Account	$ 403,500	$ 65,600			$ 469,100
Interagency Billing and Receipts Account	1,129,200	557,600	$218,200		1,905,000
TOTAL	$1,532,700	$ 623,200	$218,200		$ 2,374,100
III. PUBLIC WORKS:					
FROM:					
General Account		$ 2,100		~~$1,496,900~~ 1,613,700	~~$ 1,499,000~~ 1,615,800
Interagency Billing and Receipts Account	$ 940,200	2,710,700		~~998,100~~ 881,300	~~4,649,000~~ 4,532,200
Permanent Building Account	~~875,100~~ 899,100	354,300	$ 24,000	~~4,550,000~~ 3,872,000	~~5,803,400~~ 5,149,400
TOTAL	~~$1,815,300~~ 1,839,300	$3,067,100	$ 24,000	~~$7,045,000~~ 6,367,000	~~$11,951,400~~ 11,297,400
IV. PURCHASING:					
FROM:					
General Account	$ 330,200	$ 141,400			$ 471,600
Interagency Billing and Receipts Account	1,152,900	1,751,600	$110,300		3,014,800
Federal Surplus Property Revolving Account	250,900	146,300			397,200
TOTAL	$1,734,000	$2,039,300	$110,300		$ 3,883,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
V. INSURANCE MANAGEMENT:					
FROM:					
Employee Group Insurance Account	$ 184,400	$ 120,200			$ 304,600
Retained Risk Account	248,400	118,300			366,700
TOTAL	$ 432,800	$ 238,500			$ 671,300
GRAND TOTAL	~~$6,167,600~~ 6,191,600	$6,310,700	$352,500	~~$7,045,000~~ 6,367,000	~~$19,875,000~~ 19,221,800

SECTION 2. There is hereby appropriated from the Permanent Building Fund to the Permanent Building Fund Advisory Council and the Division of Public Works the following amount, or so much thereof as may be necessary, for the specified project:

Attorney General-Joe R. Williams Building Remodel $100,000

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 18, 1993.

CHAPTER 99
(S.B. No. 1188, As Amended)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO EXEMPT IDAHO OLD TIMER AND IDAHO VINTAGE LICENSE PLATES FROM THE SPECIAL LICENSE PLATE PROGRAM, AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 49-406, IDAHO CODE; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-406, IDAHO CODE, TO PROVIDE FOR SPECIAL IDAHO OLD TIMER LICENSE PLATES AND TO PROVIDE FOR REGISTRATION AND STANDARD LICENSE PLATES FOR AN IDAHO OLD TIMER MOTOR VEHICLE; REPEALING SECTION 49-406A, IDAHO CODE; AND AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-406A, IDAHO CODE, TO PROVIDE FOR SPECIAL IDAHO VINTAGE LICENSE PLATES AND TO PROVIDE FOR REGISTRATION AND STANDARD LICENSE PLATES FOR AN IDAHO VINTAGE MOTOR VEHICLE OR MOTORCYCLE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds, designed for the purpose of carrying passengers and not used for hire shall be:

Vehicles one (1) and two (2) years old $36.48
Vehicles three (3) and four (4) years old 33.48
Vehicles five (5) and six (6) years old 26.28
Vehicles seven (7) and eight (8) years old 22.68
Vehicles over eight (8) years old 16.08

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers ending in 1, and proceeding consecutively through December for holders of validation registration stickers ending in 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all motor vehicles equipped to carry passengers and operated primarily for hire exclusively within the limits of an incorporated city and adjacent thereto, when the service outside the city is a part of a regular service rendered inside the city, and for school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twelve dollars and forty-eight cents ($12.48).

(3) For all hearses, ambulances and wreckers the annual fee shall be twenty-nine dollars and forty cents ($29.40), and these vehicles shall bear passenger car plates. No operator of a hearse, ambulance, or wrecker shall be entitled to operate them by virtue of any dealer's license that may have been issued under the provisions of this chapter.

(4) For all motorcycles and all terrain vehicles the annual fee shall be nine dollars ($9.00). For operation of an ATV off the public highways, the fee specified in section 67-7122, Idaho Code, shall also be paid.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(9~~8~~) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars ($25.00) and an annual program fee of fifteen dollars ($15.00) for all special license plate programs except for those license plates issued pursuant to sections 49-403, 49-403A, 49-406, 49-406A, 49-410, 49-415 and 49-415B, Idaho Code. The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs which are provided to the public as a personal alternative to the standard license plate requirements.

SECTION 2. That Section 49-406, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-406, Idaho Code, and to read as follows:

49-406. IDAHO OLD TIMER -- SPECIAL LICENSE PLATE PROGRAM -- REGISTRATION AND STANDARD LICENSE PLATES. (1) Any motor vehicle manufactured prior to January 1, 1943, that is restored and maintained to its original likeness using original-type parts and materials, without major modifications and which is a collector's item shall be known as an "Idaho Old Timer." Any motor vehicle which is altered from the original design as a street rod, hot rod or customized show car, is not an "Idaho Old Timer" as herein defined.

(2) Any motor vehicle which qualifies as an "Idaho Old Timer" shall be used for exhibits, parades, tours, club activities and such occasional use as is necessary for operation and maintenance of the vehicle, and shall not be used for business or commercial purposes, racing or rallies, or for regular personal transportation as driving to and from school or work.

(3) The "Idaho Old Timer" special license plate shall be of a color and design acceptable to representatives of the "Idaho Old Timer" interest group and approved by the department, utilizing a numbering system as determined by the department.

(4) Applicants for special "Idaho Old Timer" license plates shall pay an initial program fee of twenty-five dollars ($25.00) and a license plate manufacturing fee of ten dollars ($10.00) for each set

of "Idaho Old Timer" plates. "Idaho Old Timer" plates shall be renewed as provided in subsection (2) of section 49-443, Idaho Code. At the time of renewal, there shall be a renewal fee of fifteen dollars ($15.00) in addition to the plate manufacturing fee of ten dollars ($10.00). The initial program fee and the renewal fee shall be deposited in the state highway account, and the plate manufacturing fee shall be deposited in the plate manufacturing account.

(5) An applicant for the special "Idaho Old Timer" plates shall execute an affidavit on a form provided by the department that the vehicle qualifies as an old timer and shall only be used for the purposes allowed. The applicant shall also provide a certificate of inspection from an antique car club in the state of Idaho verifying the authenticity of the restoration. This inspection shall be verified on an official form of the car club, as approved by the department, and shall contain the signature of an authorized inspector. The cost of the inspection shall be the responsibility of the owner. The department shall not inspect such vehicles nor render an opinion with regard to the authenticity of the restoration.

The department shall have the authority to refuse to issue special plates and may demand the return of such plates if the applicant has failed to comply with the provisions of this section.

(6) If an "Idaho Old Timer" is to be used for personal transportation, business or commercial purposes, the owner shall register the vehicle under the provisions of section 49-402, or section 49-434, Idaho Code, as applicable, and shall obtain and display the standard issue of license plates. It shall be permissible to display both the standard issue of plates and the special "Idaho Old Timer" plates.

(7) Whenever title or interest in an Old Timer vehicle is transferred or assigned, the transferor may retain the special plates for use on another vehicle which qualifies by providing the information required in subsection (5) of this section and by paying the required transfer fee. If the vehicle is also registered under the provisions of section 49-402 or section 49-434, Idaho Code, the provisions of section 49-431, Idaho Code, relating to the procedure for assignment and transfer of interest, shall apply.

SECTION 4. That Section 49-406A, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-406A, Idaho Code, and to read as follows:

49-406A. IDAHO VINTAGE -- SPECIAL LICENSE PLATE PROGRAM -- REGISTRATION AND STANDARD LICENSE PLATES. (1) Any motor vehicle or motorcycle which is at least thirty (30) years old that does not qualify as an "Idaho Old Timer" and that is restored and maintained to its original likeness using original-type parts and materials, without major modifications and which is a collector's item shall be known as an "Idaho Vintage." Any motor vehicle which is altered from the original design as a street rod, hot rod or customized show car, or a modified motorcycle or a customized show motorcycle, is not an "Idaho Vintage"

as herein defined.

(2) Any motor vehicle or motorcycle which qualifies as an "Idaho Vintage" shall be used for exhibits, parades, tours, club activities and such occasional use as is necessary for operation and maintenance of the vehicle, and shall not be used for business or commercial purposes, racing or rallies, or for regular personal transportation as driving to and from school or work.

(3) The Idaho Vintage special license plate shall be of a color and design acceptable to representatives of the "Idaho Vintage" interest group and approved by the department, utilizing a numbering system as determined by the department.

(4) Applicants for special "Idaho Vintage" license plates shall pay an initial program fee of twenty-five dollars ($25.00) and a license plate manufacturing fee of ten dollars ($10.00) for each set of Idaho vintage plates. Idaho vintage plates shall be renewed as provided in subsection (2) of section 49-443, Idaho Code. At the time of renewal, there shall be a renewal fee of fifteen dollars ($15.00) in addition to the plate manufacturing fee of ten dollars ($10.00). The initial program fee and the renewal fee shall be deposited in the state highway account, and the plate manufacturing fee shall be deposited in the plate manufacturing account.

(5) An applicant for the special "Idaho Vintage" plates shall execute an affidavit on a form provided by the department that the vehicle or motorcycle qualifies as an Idaho vintage and shall only be used for the purposes allowed. The applicant shall also provide a certificate of inspection from a vintage car club in the state of Idaho verifying the authenticity of the restoration. This inspection shall be verified on an official form of the car club, as approved by the department, and shall contain the signature of an authorized inspector. The cost of the inspection shall be the responsibility of the owner. The department shall not inspect such vehicles nor render an opinion with regard to the authenticity of the restoration.

The department shall have the authority to refuse to issue special plates and may demand the return of such plates if the applicant has failed to comply with the provisions of this section.

(6) If an "Idaho Vintage" is to be used for personal transportation, business or commercial purposes, the owner shall register the vehicle under the provisions of section 49-402, or section 49-434, Idaho Code, as applicable, and shall obtain and display the standard issue of license plates. It shall be permissible to display both the standard issue of plates and the special "Idaho Vintage" plates.

(7) Whenever title or interest in an Idaho vintage motor vehicle or motorcycle is transferred or assigned, the transferor may retain the special plates for use on another vehicle which qualifies by providing the information required in subsection (5) of this section and by paying the required transfer fee. If the vehicle is also registered under the provisions of section 49-402 or section 49-434, Idaho Code, the provisions of section 49-431, Idaho Code, relating to the procedure for assignment and transfer of interest, shall apply.

Approved March 19, 1993.

CHAPTER 100
(H.B. No. 101)

AN ACT
RELATING TO ABSENTEE VOTING; AMENDING SECTION 34-1003, IDAHO CODE, TO PROVIDE THAT ANY COUNTY CLERK MAY USE MAIL-IN ABSENTEE BALLOTS WITHIN THEIR COUNTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 34-1003, Idaho Code, be, and the same is hereby amended to read as follows:

34-1003. ISSUANCE OF ABSENTEE BALLOT. Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, he shall arrange for the applicant to vote by absent elector's ballot in the following manner:

(1) If the applicant is classed under section 34-1002A(1), Idaho Code, the clerk shall deliver to the applicant by mail to the mailing address given in the application, an official absent elector's ballot, a return envelope with the affidavit thereon properly filled in as to precinct and residence address as shown by the records in his office, and an instruction card.

(2) If the applicant is classed under section 34-1002A(2), Idaho Code, and if the applicant in the United States service submits a properly executed federal post card application and the county clerk receiving it shall determine that such applicant is not properly registered, the county clerk shall cause the applicant to be registered and shall then deliver to the applicant the official elector's ballot and other materials as above set forth.

(3) If the applicant is classed under section 34-1002A(3), Idaho Code, the county clerk shall forthwith notify the applicant that he shall appear personally and vote at the "absent elector's voting place" in the county courthouse during the time prescribed.

(4) In the case of applicants classified under subsections (1) and (2) of this section, the absent elector's ballot and other materials shall be delivered or mailed to the absent elector within forty-eight (48) hours after the receipt of the application, if the official ballots are then printed, or, if not then printed, within forty-eight (48) hours after such printed ballots shall be delivered to the county clerk. All absentee ballots for the general election shall be printed no later than fifty (50) days prior to the election.

(5) If the applicant is classed under section 34-1002A(4), Idaho Code, the county clerk shall forthwith notify the applicant by setting forth the time and place at which the county clerk or deputy clerk and witnesses shall personally deliver the absentee ballot. Each political party which desires to have a witness accompany the clerk or deputy clerk shall supply the county clerk with the name of its county chairman or an alternate who may be delegated to act on behalf of said political party no later than sixty (60) days prior to the election.

The clerk, upon receiving an application under section 34-1002A(5), Idaho Code, shall notify the county chairman of each political party or the person authorized to act for the party, of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

If the political party desires to supply a witness, it shall be the party's duty to supply the names of witnesses and it shall have the duty to see that said witness is present at the appointed time. If the clerk so requests, a witness may be required to be available throughout the business day on which the ballot is to be delivered.

Should the witness so designated fail to appear or if the political party does not desire to have a witness present, the clerk may proceed as prescribed by law, without further compliance with subsection (5) of this section.

A candidate for public office or a spouse of a candidate for public office shall not sign as a witness or as a deputy clerk in the personal delivery of absentee ballots under section 34-1002A(5), Idaho Code.

(6) An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

(7) Notwithstanding any other provision of law to the contrary, the county clerk may, upon appropriate request, mail absentee ballots to electors within the county if such mailing would enhance the electors' franchise.

Approved March 22, 1993.

CHAPTER 101
(H.B. No. 91)

AN ACT

RELATING TO PROBATION AND PAROLE; AMENDING SECTION 19-2520, IDAHO CODE, AS ENACTED BY CHAPTER 46, LAWS OF 1977, TO RENUMBER AND TO REQUIRE THAT PERSONS BE PLACED ON PROBATION IF THE PROBATION SERVICE HAS RESOURCES TO ALLOW FOR PLACEMENT; AND AMENDING SECTION 20-219, IDAHO CODE, TO REQUIRE THAT THE BOARD OF CORRECTION SUPERVISE, ON PROBATION, THOSE PERSONS CONVICTED OF FELONIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2520, Idaho Code, as enacted by Chapter 46, Laws of 1977, be, and the same is hereby amended to read as follows:

19-252~~0~~1. CRITERIA FOR PLACING DEFENDANT ON PROBATION OR IMPOSING IMPRISONMENT. (1) The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) a lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) the defendant is a multiple offender or professional criminal.

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of avoiding a sentence of imprisonment:

(a) the defendant's criminal conduct neither caused nor threatened harm;

(b) the defendant did not contemplate that his criminal conduct would cause or threaten harm;

(c) the defendant acted under a strong provocation;

(d) there were substantial grounds tending to excuse or justify the defendant's criminal conduct, through failing to establish a defense;

(e) the victim of the defendant's criminal conduct induced or facilitated it's commission;

(f) the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that was sustained; provided, however, nothing in this section shall prevent the appropriate use of imprisonment and restitution in combination;

(g) the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) the defendant's criminal conduct was the result of circumstances unlikely to recur;

(i) The character and attitudes of the defendant indicate that the commission of another crime is unlikely.

(3) When a person who has been convicted of a crime is not sentenced to imprisonment, the court may place the defendant on probation if the supervision, guidance, assistance or direction is needed that the probation service ~~can~~ has the resources to provide.

SECTION 2. That Section 20-219, Idaho Code, be, and the same is hereby amended to read as follows:

20-219. PROBATION AND PAROLE SUPERVISION. The state board of correction shall be charged with the duty of supervising all persons convicted of a felony placed on probation or released from the state penitentiary on parole, and all persons convicted of a felony released on parole or probation from other states and residing in the state of Idaho; of making such investigations as may be necessary; of reporting alleged violations of parole or probation in specific cases to the commission or the courts to aid in determining whether the parole or probation should be continued or revoked and of preparing a case history record of the prisoners to assist the commission or the courts in determining if they should be paroled or should be released on probation.

Approved March 22, 1993.

CHAPTER 102
(H.B. No. 109)

AN ACT

RELATING TO THE IDAHO CONSUMER PROTECTION ACT; AMENDING SECTION 48-602, IDAHO CODE, TO ADD NEW DEFINITIONS AND CLARIFY EXISTING DEFINITIONS; AMENDING SECTION 48-603B, IDAHO CODE, TO DECRIMINALIZE VIOLATIONS OF UNFAIR TAX RETURN PREPARATION PRACTICES; AMENDING SECTION 48-606, IDAHO CODE, TO ALLOW THE ATTORNEY GENERAL TO PROCEED UNDER THIS SECTION WHEN HE HAS REASON TO BELIEVE THAT UNLAWFUL ACTS HAVE, ARE OR WILL OCCUR AND TO PROVIDE A PLACE OF VENUE FOR ACTIONS AGAINST OUT-OF-STATE PERSONS; AMENDING SECTION 48-611, IDAHO CODE, TO ALLOW THE ATTORNEY GENERAL TO PROCEED UNDER THIS SECTION WHEN HE HAS REASON TO BELIEVE THAT UNLAWFUL ACTS HAVE, ARE OR WILL OCCUR; AMENDING SECTION 48-614, IDAHO CODE, TO PROVIDE A PLACE OF VENUE FOR ACTIONS UNDER THIS SECTION AGAINST OUT-OF-STATE PERSONS, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 48-615, IDAHO CODE, TO INCLUDE REMEDIES FOR VIOLATIONS OF COURT ORDERS, AND TO CORRECT TERMINOLOGY; AND AMENDING SECTION 48-616, IDAHO CODE, TO DELETE THE REQUIREMENT THAT A CORPORATION VIOLATE AN INJUNCTION REPEATEDLY BEFORE ITS FRANCHISE CAN BE REVOKED BY A COURT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 48-602, Idaho Code, be, and the same is hereby amended to read as follows:

48-602. DEFINITIONS. As used in this act:

(1) "Person" means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, trusts, business entities, and any other legal entity, or any other group associated in fact although not a legal entity or any agent, assignee, heir, employee, representative or servant thereof.

(2) "Trade" and "commerce" means the advertising, offering for

sale, ~~sale,~~ selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services or ~~distribution of any~~ distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic, or electronic transcription~~,~~ or other tangible document or recording~~, wherever situate~~.

(4) "Examination" of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(5) "Appropriate trade premises," means premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(6) "Goods" means any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, including certificates or coupons exchangeable for such goods.

(7) "Services" means work, labor ~~and services, including, but not limited to, services furnished in connection with the repair, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods~~ or any other act or practice provided or performed by a seller to or on behalf of a consumer.

(8) "Actions or transactions permitted under laws administered by a regulatory body or officer" mean specific acts, practices or transactions authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.

(9) "Regulatory body or officer" means any person or governmental entity with authority to act pursuant to state of Idaho or federal statute.

SECTION 2. That Section 48-603B, Idaho Code, be, and the same is hereby amended to read as follows:

48-603B. UNFAIR TAX RETURN PREPARATION PRACTICES. (1) As used in this section, unless the context otherwise requires:

(a) "Tax preparer" means a person who, for a fee, engages in the business of assisting with, or preparing, federal, state, or local government income tax returns.

(b) "Fee" means any moneys or valuable consideration paid or promised to be paid for services rendered or to be rendered by any person or persons functioning as or conducting the business of a tax preparer.

(2) The following acts or omissions related to the conduct of the business of the tax preparer, which are done by the tax preparer or any employee, partner, officer, or member of the tax preparer are unlawful:

(a) Making or authorizing in any manner or by any means whatever

any statement written or oral which is untrue or misleading.

(b) Causing or allowing a consumer to sign any document in blank relating to a tax return thereof.

(c) Failing or refusing to give to a consumer a copy of any document requiring his signature, as soon as the consumer signs such document.

(d) Failing to maintain a copy of any tax return prepared for a consumer for the applicable statute of limitation period on federal tax returns and state tax returns.

(e) Making false promises of a character likely to influence, persuade, or induce a consumer to authorize the tax preparation service.

(3) (a) It is ~~a misdemeanor~~ unlawful for any person, including an individual, firm, corporation, association, partnership, joint venture, or any employee or agent therefor, to use or disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns unless such use or disclosure is within any of the following:

(i) Consented to in writing by the taxpayer in a separate document.

(ii) Expressly authorized by state or federal law.

(iii) Necessary to the preparation of the return.

(iv) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns if he does either of the following:

(i) Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of state or federal income tax returns.

(ii) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(4) (a) It is ~~a misdemeanor~~ unlawful for any person, including any individual, association, partnership, joint venture, or any employee or agent therefor, to fail to sign any state income tax return, or to fail to include his name, address, and social security number on any state income tax return, which he prepares for another for compensation, or which he assists another in the preparation of for compensation.

(b) It is ~~a misdemeanor~~ unlawful for any corporation to fail to include its name and address on any state income tax return which it prepares for another for compensation, or which it assists another in the preparation of for compensation.

(5) A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document is not considered, for the purposes of this section, as preparing the return, declaration, statement or other document.

SECTION 3. That Section 48-606, Idaho Code, be, and the same is hereby amended to read as follows:

48-606. PROCEEDINGS BY ATTORNEY GENERAL. (1) Whenever the attor-

ney general has ~~probable cause~~ reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person:

(a) To obtain a declaratory judgment that a method, act or practice violates the provisions of this chapter;

(b) To enjoin any method, act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to that person as provided by the Idaho rules of civil procedure;

(c) To recover on behalf of consumers actual damages or restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;

(d) To order specific performance by the violator;

(e) To recover from the alleged violator civil penalties of up to five thousand dollars ($5,000) per violation for violation of the provisions of this chapter; and

(f) To recover from the alleged violator reasonable expenses, investigative costs and attorney's fees incurred by the attorney general.

(2) The action may be brought in the district court of the county in which such person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the action may be brought in any district court in this state. The said courts are authorized to issue temporary restraining orders or preliminary or permanent injunctions to restrain and prevent violations of the provisions of this chapter, and such injunctions shall be issued without bond.

(3) Unless the attorney general finds in writing that the purposes of this chapter will be substantially and materially impaired by delay in instituting legal proceedings, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated to the person against whom proceedings are contemplated and allow such person a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance or a consent judgment as in this chapter provided.

(4) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice alleged to be a violation of the provisions of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The consent judgment may also include a stipulation for civil penalties to be paid, not in excess of five thousand dollars ($5,000) per alleged violation; a stipulation to pay to consumers actual damages or to allow for restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; and/or a stipulation for specific performance. Before any consent judgment entered

into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all penalties provided by law therefor, including the penalties set forth in section 48-615, Idaho Code.

(5) All penalties, costs and fees recovered by the attorney general shall be remitted to the consumer protection account which is hereby created in the state operating fund. Moneys in the account shall be treated as interaccount receipts and may be expended pursuant to interaccount appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter.

SECTION 4. That Section 48-611, Idaho Code, be, and the same is hereby amended to read as follows:

48-611. INVESTIGATIVE DEMAND BY ATTORNEY GENERAL -- REPORT REQUIRED. (1) When the attorney general has ~~probable cause~~ reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation. The return date in said investigative demand shall be not less than twenty (20) days after serving of the demand.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada County.

SECTION 5. That Section 48-614, Idaho Code, be, and the same is hereby amended to read as follows:

48-614. FAILURE TO OBEY ATTORNEY GENERAL -- APPLICATION TO DISTRICT COURT. (1) If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the attorney general, the attorney general may, after notice, apply to a district court of the county in which the person resides or has a principal place of business, or if the person does not reside in or have a principal place of business in this state, the attorney general may apply to any district court in this state and, after hearing thereon, request an order:

(a) Ordering such person to file such statement or report, or to comply with the subpoena or investigative demand issued by the attorney general;
(b) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; and
(c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) The court shall award the prevailing party reasonable expenses and attorney fees incurred in obtaining an order under the provisions of this section if the court finds that the attorney general's request for an order under this section or a person's resistance to filing any statement or report, or obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Any disobedience of any final order entered under the provisions of this section by any court shall be punished as a contempt thereof. Contempt penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

SECTION 6. That Section 48-615, Idaho Code, be, and the same is hereby amended to read as follows:

48-615. VIOLATION OF INJUNCTION -- CIVIL PENALTY. Any person who violates the terms of an injunction issued or consent order entered into pursuant to section 48-606, Idaho Code, or an order entered into pursuant to section 48-614, Idaho Code, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars ($10,000) per violation, the amount of the penalty to be determined by the district court issuing the injunction. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties. Said civil penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

SECTION 7. That Section 48-616, Idaho Code, be, and the same is hereby amended to read as follows:

48-616. FORFEITURE OF CORPORATE FRANCHISE. Upon petition by the attorney general, the district court of the county in which the principal place of business of the corporation is located may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which ~~repeatedly~~ violates the terms of any

injunction issued under section 48-606, Idaho Code.

Approved March 22, 1993.

CHAPTER 103
(H.B. No. 120)

AN ACT

RELATING TO JUDICIAL REVIEW OF DECISIONS BY THE BOARD OF COUNTY COMMISSIONERS; REPEALING SECTIONS 31-1509, 31-1510 AND 31-1511, IDAHO CODE; AND AMENDING CHAPTER 15, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-1509, IDAHO CODE, TO PROVIDE THE MANNER OF JUDICIAL REVIEW OF ACTIONS BY THE BOARD OF COUNTY COMMISSIONERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 31-1509, 31-1510 and 31-1511, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Chapter 15, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-1509, Idaho Code, and to read as follows:

31-1509. JUDICIAL REVIEW OF BOARD DECISIONS. (1) Unless otherwise provided by law, judicial review of any act, order or proceeding of the board may be initiated by any person aggrieved thereby within the same time and in the same manner as provided in chapter 52, title 67, Idaho Code, for judicial review of actions.

(2) Venue for judicial review of board actions shall be in the district court of the county governed by the board.

Approved March 22, 1993.

CHAPTER 104
(H.B. No. 130, As Amended)

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING SECTION 67-5309, IDAHO CODE, TO DELETE REVIEW BY THE PERSONNEL COMMISSION OF THE CLASSIFICATION AND COMPENSATION PLANS, POLICIES AND PROCEDURES ON A BIENNIAL BASIS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5309, Idaho Code, be, and the same is hereby amended to read as follows:

67-5309. RULES OF THE PERSONNEL COMMISSION. The commission shall have the power and authority to adopt, amend, or rescind such rules and regulations as may be necessary for proper administration of this act. Such rules shall include:

(a) A rule requiring the personnel commission, after consulting with each department to develop, adopt, and make effective, a classification plan for positions covered by this act, based upon an analysis of the duties and responsibilities of the position. The classification plan will include an appropriate title for each class, and a description of duties and responsibilities of positions in the classes and requirements of minimum training, experience and other qualifications, suitable for the performance of duties of the position.

(b) A rule requiring the personnel commission, after consulting with each department to develop, and adopt a comprehensive compensation plan for all classes of positions covered under this act. The compensation plan shall include salary schedules with the salary of each position consistent with the responsibility and difficulty of the work as outlined in the job specifications.

(c) A rule requiring that all classes of positions which are common to the departments concerned shall have the same titles, minimum requirements and compensation.

(d) A rule providing for ~~not less than biennial~~ review by the commission of the personnel system including classification and compensation plans, policies and procedures.

(e) A rule requiring fair and impartial selection of appointees to all positions other than those defined as nonclassified in this act, on the basis of open competitive merit examinations. An application for an examination will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing hospitalization of no more than one (1) year following discharge, during any period in which the examination was open; the application must be submitted within one hundred twenty (120) days of separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of the examination. A disabled veteran may file an application at any time for any position for which the commission maintains a register or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. Examinations may be assembled or unassembled and may include various examining techniques such as rating of training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measure of ability to perform the duties of the position. Examinations shall be scored objectively. Five (5) points shall be added to the earned rating of any war veteran and the widow of any war veteran as long as she remains unmarried. Ten (10) points shall be added to the earned rating of any disabled war veteran, the widow of any disabled war veteran as long as she remains unmarried or the spouse of any disabled veteran who is physically unable to perform the work in the position to which the spouse seeks to apply the preference. Employment registers shall be established in order of final score except that the

names of all five (5) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating, and the names of all ten (10) point preference eligibles shall be placed at the top of the register above the names of all nonpreference eligibles. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the five (5) top ranking available eligibles plus the names of all individuals with scores identical to the fifth ranking eligible on the register; however, selective certification shall be permitted when justified by the hiring department, under rules to be made by the commission defining adequate justification based on the duties and requirements of the positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one (1) year after departments commence participation in the personnel system.

(f) A rule that, whenever practicable, a vacancy in a classified position shall be filled by the promotion of a qualified permanent employee of the agency in which the vacancy occurs. An inter-agency promotion shall be made through competitive examination and all qualified state employees shall have the opportunity to compete for such promotions. If an employee's name appears within certifiable range on a current register for a higher class of position, he shall be eligible for a transfer and promotion.

(g) A rule for development and maintenance of a system of service ratings and the use of such ratings by all departments in connection with promotions, demotions, retentions, separations and reassignments. The rule shall require that an evaluation of each classified employee shall be made after each two thousand eighty (2,080) hour period of credited state service, and that a copy of the evaluation shall be filed with the commission.

(h) A rule prohibiting disqualification of any person from taking an examination, from appointment to a position, from promotion, or from holding a position because of race or national origin, color, sex, age, political or religious opinions or affiliations, or other nonmerit factors, and providing for right of appeal.

(i) A rule establishing a probation period not to exceed six (6) months for all appointments and promotions, except that peace officers as defined in section 19-5101, Idaho Code, shall be subject to a probation period of one (1) year, and for the appointing authority to provide the employee and the commission a performance evaluation indicating satisfactory or unsatisfactory performance not later than thirty (30) days after the expiration of the probationary period. The rule shall provide that if the appointing authority fails to provide a performance evaluation within thirty (30) days after the expiration of the probationary period, the employee shall be deemed to have satisfactorily completed the probation unless the appointing authority receives approval from the state personnel director to extend the probationary period for good cause for an additional specified period not to exceed six (6) months. If an employee is performing in an unsatisfactory manner during the entrance probationary period, the appointing authority shall ask the employee to resign, and if no resignation is submitted, shall terminate the employment of such employee without the

right of grievance or appeal.

(j) A rule concerning provisional appointments.

(k) A rule concerning temporary appointments.

(l) A rule governing the employment of consultants and persons retained under independent contract.

(m) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:

1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, rules and regulations of the employee's department, or rules and regulations of the personnel commission.
2. Inefficiency, incompetency, or negligence in the performance of duties.
3. Physical or mental incapability for performing assigned duties.
4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.
5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.
6. Intoxication on duty.
7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.
8. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.
9. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.
10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.
11. Habitual pattern of failure to report for duty at the assigned place and time.
12. Habitual improper use of sick leave privileges.
13. Unauthorized disclosure of confidential information from official records.
14. Absence without leave.
15. Misstatement or deception in the application for the position.
16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.
17. Prohibited participation in political activities.

(n) A rule to establish procedures for maintenance of a record of the employment history and appropriate information relating to performance of all employees under the personnel system.

(o) Rules to provide for recruitment programs in cooperation with department heads and the employment security agency in keeping with current employment conditions and labor market trends.

(p) Rules to establish procedures for examinations as necessary

for the purpose of maintaining current registers from which to fill employment vacancies.

(q) Other rules not inconsistent with the foregoing provisions of this section as may be necessary and proper for the administration and enforcement of this act.

(r) A rule concerning "project exempt" appointments.

(s) Rules relating to leave for state employees from official duties, including but not limited to sick leave, military leave, jury duty, leaves of absence without compensation and such other forms of absence from performance of duties in the course of state employment as may be necessary.

(t) A rule providing for shift differential pay. Beginning the first full pay period in fiscal year 1992, the rate of such differential pay shall be one and one-half percent (1 1/2%) of the employee's hourly rate; beginning the first full pay period in fiscal year 1993, the differential pay rate shall be three percent (3%); and beginning the first full pay period of fiscal year 1994 and each fiscal year thereafter, the rate of differential pay shall be five percent (5%).

Approved March 22, 1993.

CHAPTER 105
(H.B. No. 201)

AN ACT

RELATING TO COURT ORDERED RESTITUTION; AMENDING SECTION 37-2732, IDAHO CODE, TO ALLOW FOR RESTITUTION FOR COSTS INCURRED IN INVESTIGATING CERTAIN VIOLATIONS AND TO ALLOW FOR RESTITUTION AND REIMBURSEMENT TO THE OFFICE OF THE ATTORNEY GENERAL; AMENDING SECTION 18-7804, IDAHO CODE, TO PROVIDE FOR REMITTANCE OF COSTS AND EXPENSES; AND AMENDING SECTION 18-8201, IDAHO CODE, TO PROVIDE FOR AN ORDER OF RESTITUTION FOR ALL COSTS AND EXPENSES OF PROSECUTION AND INVESTIGATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2732, Idaho Code, be, and the same is hereby amended to read as follows:

37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(A) a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for a term of years not to exceed life imprisonment, or fined not more than twenty-five thousand dollars ($25,000), or both;

(B) any other controlled substance which is a nonnarcotic

drug classified in schedule I, or a controlled substance classified in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars ($15,000), or both;

(C) a substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars ($10,000), or both;

(D) a substance classified in schedules V and VI, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(A) a counterfeit substance classified in schedule I which is a narcotic drug, or a counterfeit substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, fined not more than twenty-five thousand dollars ($25,000), or both;

(B) any other counterfeit substance classified in schedule I which is a nonnarcotic drug contained in schedule I or a counterfeit substance contained in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars ($15,000), or both;

(C) a counterfeit substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars ($10,000), or both;

(D) a counterfeit substance classified in schedules V and VI or a noncontrolled counterfeit substance, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or both.

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

(1) Any person who violates this subsection and has in his possession a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than seven (7) years, or fined not more than fifteen thousand dollars ($15,000), or both.

(2) Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars ($5,000) or both.

(3) Any person who violates this subsection and has in his pos-

session a controlled substance which is a nonnarcotic drug classified in schedule I except lysergic acid diethylamide, or a controlled substance classified in schedules III, IV, V and VI is guilty of a misdemeanor and upon conviction thereof may be imprisoned for not more than one (1) year, or fined not more than one thousand dollars ($1,000), or both.

(d) It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars ($300) and not more than ninety (90) days in the county jail, or both.

(e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains tetrahydrocannabinal, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars ($10,000), or both.

(f) If two (2) or more persons conspire to commit any offense defined in this act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

(g) (1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distribute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000) and not more than one (1) year in the county jail, or both.

(2) It is unlawful for any person to possess a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars ($300) and not more than six (6) months in the county jail, or both.

(h) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale simulated controlled substances. Any person who violates this subsection is guilty of a misdemeanor and shall be punished in the same manner as prescribed in subsection (g) of this section.

(i) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in section 37-2701(z), Idaho Code, in the course of professional practice or research.

(j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle

or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

(k) Upon conviction of a felony violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the department of law enforcement, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the department of law enforcement, those moneys shall be paid to the department of law enforcement for deposit into the drug enforcement donation account created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general account. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

SECTION 2. That Section 18-7804, Idaho Code, be, and the same is hereby amended to read as follows:

18-7804. PROHIBITED ACTIVITIES -- PENALTIES. (a) It is unlawful for any person who has received any proceeds derived directly or indirectly from a pattern of racketeering activity in which the person has participated, to use or invest, directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any interest in, or the establishment or operation of, any enterprise or real property. Whoever violates this subsection is guilty of a felony.

(b) It is unlawful for any person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property. Whoever violates this subsection is guilty of a felony.

(c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of the affairs of such enterprise by engaging in a pattern of racketeering activity. Whoever violates the provisions of this subsection is guilty of a felony.

(d) It is unlawful for any person to conspire to violate any of the provisions of subsections (a) through (c) of this section. Whoever violates the provisions of this subsection is guilty of a felony.

(e) Whoever violates the provisions of this act is punishable by a fine not to exceed twenty-five thousand dollars ($25,000) and/or imprisonment not to exceed a term of fourteen (14) years in the Idaho state penitentiary.

(f) Upon a conviction of a violation under the provisions of this

chapter, the court may order restitution for all costs and expenses of prosecution and investigation, pursuant to the terms and conditions set forth in section 37-2732(k), Idaho Code.

(g) In addition to any other penalties prescribed by law, whoever violates any provisions of this act shall forfeit to the state of Idaho:

(1) Any interest acquired or maintained in violation of the racketeering act; and

(2) Any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of in violation of the provisions of the racketeering act.

(~~g~~h) In any action brought by the state under the racketeering act, the district court shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under the provisions of this section, as it shall deem proper.

(~~h~~i) Upon conviction of a person under the provisions of this section, the court shall authorize the attorney general or the proper prosecuting attorney to seize all property or other interest declared forfeited under the provisions of this section upon such terms and conditions as the court shall deem proper, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the convicted person, it shall expire and shall not revert to the convicted person.

SECTION 3. That Section 18-8201, Idaho Code, be, and the same is hereby amended to read as follows:

18-8201. MONEY LAUNDERING AND ILLEGAL INVESTMENT -- PENALTY -- RESTITUTION. (1) It is unlawful for any person to knowingly or intentionally give, sell, transfer, trade, invest, conceal, transport, or make available anything of value that the person knows is intended to be used to commit or further a pattern of racketeering activity as defined in section 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho Code.

(2) It is unlawful for any person to knowingly or intentionally direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known by that person to be derived from a pattern of racketeering activity as defined in section 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho Code.

(3) It is unlawful for any person to knowingly or intentionally conduct a financial transaction involving proceeds known by that person to be derived from a pattern of racketeering activity as defined in section 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho Code, if the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, or to avoid a transaction reporting requirement under state or federal law.

(4) A person who violates the provisions of this section is guilty of a felony and upon conviction may be fined not more than two hundred fifty thousand dollars ($250,000) or twice the value of the property involved in the transaction, whichever is greater, or be imprisoned for not more than ten (10) years, or be both so fined and imprisoned.

(5) Upon a conviction of a violation under the provisions of this chapter, the court may order restitution for all costs and expenses of prosecution and investigation, pursuant to the terms and conditions set forth in section 37-2732(k), Idaho Code.

Approved March 22, 1993.

CHAPTER 106
(H.B. No. 247)

AN ACT

RELATING TO THE CRIMINAL JUSTICE SYSTEM; AMENDING SECTION 20-223, IDAHO CODE, TO PROVIDE THAT THE COMMISSION OF PARDONS AND PAROLES MAY PAROLE AN INMATE SUFFERING FROM AN INCAPACITATING OR TERMINAL MEDICAL CONDITION AND REQUIRING REPORTS TO THE LEGISLATURE OF THE CONDITION OF PERSONS GRANTED MEDICAL PAROLE; AND AMENDING SECTION 19-2513, IDAHO CODE, TO PROVIDE A CONDITION FOR ALLOWING PAROLE DURING THE MINIMUM TERM OF CONFINEMENT, AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-223, Idaho Code, be, and the same is hereby amended to read as follows:

20-223. PAROLE, RULES AND REGULATIONS GOVERNING -- RESTRICTIONS -- PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION. (a) Subject to section 19-2513, Idaho Code, the commission shall have the power to establish rules, regulations, policies or procedures in compliance with chapter 52, title 67, Idaho Code, under which any prisoner, excepting any under sentence of death, may be allowed to go upon parole but to remain while on parole in the legal custody and under the control of the board and subject to be taken back into confinement at the direction of the commission.

(b) No person serving a sentence for rape, incest, committing a lewd act upon a child, crime against nature, or with an intent or an assault with intent to commit any of the said crimes or whose history and conduct indicate to the commission that he is a sexually dangerous person, shall be released on parole except upon the examination and evaluation of one or more psychiatrists or psychologists to be selected by the commission and such evaluation shall be duly considered by the commission in making its parole determination. The commission may, in its discretion, likewise require a similar examination and evaluation for persons serving sentences for crimes other than those above enumerated. No psychiatrist or psychologist making such

evaluation shall be held financially responsible to any person for denial of parole by the commission or for the results of the future acts of such person if he be granted parole.

(c) Before considering the parole of any prisoner, the commission shall afford the prisoner the opportunity to be interviewed. A parole shall be ordered only for the best interests of society when the commission reasonably believes that the prisoner no longer poses a threat to the safety of society, not as a reward of clemency and it shall not be considered to be a reduction of sentence or a pardon. A prisoner shall be placed on parole only when arrangements have been made for his employment or maintenance and care, and when the commission believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen. The commission may also by its rules, regulations, policies or procedures fix the times and conditions under which any application denied may be reconsidered.

(d) In making any parole or commutation decision with respect to a prisoner, the commission shall consider the compliance of the prisoner with any order of restitution which may have been entered according to section 19-5304, Idaho Code. The commission may make compliance with such an order of restitution a condition of parole.

(e) Except as provided in subsection (a) of this section, no provision of chapter 52, title 67, Idaho Code, shall apply to the commission.

(f) Subject to the limitations of this subsection and notwithstanding any fixed term of confinement or minimum period of confinement as provided in section 19-2513, Idaho Code, the commission may parole an inmate for medical reasons. A prisoner may be considered for medical parole only when the prisoner is permanently incapacitated or terminally ill and when the commission reasonably believes the prisoner no longer poses a threat to the safety of society. For the purposes of this section "permanently incapacitated" shall mean a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. For the purposes of this section "terminally ill" shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill.

(g) The commission shall prepare and send to the house and senate judiciary committees annually a report containing the names, medical condition and current status of all persons granted parole pursuant to subsection (f) of this section.

SECTION 2. That Section 19-2513, Idaho Code, be, and the same is hereby amended to read as follows:

19-2513. UNIFIED SENTENCE. Whenever any person is convicted of having committed a felony, the court shall, unless it shall commute the sentence, suspend or withhold judgment and sentence or grant probation, as provided ~~by~~ in chapter 26, ~~of~~ title 19, Idaho Code, or unless it shall impose the death sentence as provided by law, sentence such offender to the custody of the state board of correction. The court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court shall set forth in its judgment and sentence the minimum period of confinement and the

subsequent indeterminate period, if any, provided, that the aggregate sentence shall not exceed the maximum provided by law. During a minimum term of confinement, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service except as provided in section 20-223(f), Idaho Code. The offender may be considered for parole or discharge at any time during the indeterminate period of the sentence and as provided in section 20-223(f), Idaho Code.

If the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with such statute. If the offense is subject to an enhanced penalty as provided by statute, or if consecutive sentences are imposed for multiple offenses, the court shall, if required by statute, direct that the enhancement or each consecutive sentence contain a minimum period of confinement; in such event, all minimum terms of confinement shall be served before any indeterminate periods commence to run.

Enactment of this amended section shall not affect the prosecution, adjudication or punishment of any felony committed before the effective date of enactment.

Approved March 22, 1993.

CHAPTER 107
(H.B. No. 251)

AN ACT

RELATING TO ARSON BY FIRE OR EXPLOSION; PROVIDING A STATEMENT OF LEGISLATIVE INTENT; AMENDING CHAPTER 8, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-801, IDAHO CODE, CREATING A DEFINITIONS SECTION FOR ARSON AND RELATED CRIMES; AMENDING CHAPTER 8, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-802, IDAHO CODE, TO PROVIDE THAT ARSON IN THE FIRST DEGREE IS COMMITTED EITHER BY FIRE OR EXPLOSION; AMENDING CHAPTER 8, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-803, IDAHO CODE, TO PROVIDE THAT ARSON IN THE SECOND DEGREE IS COMMITTED EITHER BY BURNING OR EXPLOSION; AMENDING CHAPTER 8, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-804, IDAHO CODE, TO PROVIDE THAT ARSON IN THE THIRD DEGREE SHALL INCLUDE THE DESTRUCTION OF REAL OR PERSONAL PROPERTY OR FOREST LAND BY FIRE OR EXPLOSION; AMENDING CHAPTER 8, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-805, IDAHO CODE, EXPANDING THE PROVISIONS FOR ENHANCEMENT OF PENALTIES FOR AGGRAVATED ARSON; REPEALING SECTIONS 18-801, 18-802, 18-803, 18-804, 18-805, 18-7003, 18-7006 AND 18-7007, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is the finding of the Legislature that the crime of arson presents a serious threat to human life and creates an extraordinary financial cost as a result of the destruction of property. This arson code categorizes the severity of penalty and punishment

based upon the priority of human life as our greatest concern, thereafter followed by concern for costs resulting from the loss of property. The addition of a definition section will clarify the categories of property protected under these laws and allow for the charging of arson not only in cases involving a charring or burning, but also, in any circumstance in which there has been any damage to property as a result of fire or explosion.

SECTION 2. That Chapter 8, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-801, Idaho Code, and to read as follows:

18-801. ARSON -- DEFINITIONS. In this chapter, the following terms have the following meanings:

(1) "Damage", in addition to its ordinary meaning, includes any charring, scorching, burning or breaking, and shall include any diminution in the value of any property as a consequence of an act;

(2) "Dwelling" means any structure used or intended for use as human habitation;

(3) "Structure" means any building of any kind, including fixtures and appurtenances attached thereto, any coliseum, bridge or carport, any tent or other portable building, or any vehicle, vessel, watercraft or aircraft;

(4) "Real property" means any land, and shall include any crops growing thereon;

(5) "Personal property" means any tangible property, including anything severed from the land;

(6) "Forest land" means any brush covered land, cut-over land, forest, prairie, grasslands, wetlands or woods;

(7) "Firefighter" means any person assisting in the suppression or extinguishment of any fire or explosion.

SECTION 3. That Chapter 8, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-802, Idaho Code, and to read as follows:

18-802. ARSON IN FIRST DEGREE -- BURNING OF DWELLING OR OTHER STRUCTURES WHERE PERSONS ARE NORMALLY PRESENT -- PENALTIES. Any person who willfully and unlawfully, by fire or explosion, damages:

(1) Any dwelling, whether occupied or not; or

(2) Any structure, whether occupied or not, in which persons are normally present, including without limitation: jails, prisons or detention centers; hospitals, nursing homes or other health care facilities; department stores, office buildings, business establishments, churches or educational institutions, or other similar structures; or

(3) Any other structure which the actor has reasonable grounds to believe is occupied by a human being; or

(4) Any real or personal property, whether the property of the actor or another, with the intent to deceive or harm any insurer or any person with a legal or financial interest in the property, or

obtain any financial gain for the actor or another;
is guilty of arson in the first degree, and upon conviction thereof shall be sentenced to the custody of the department of correction for not more than twenty-five (25) years or fined not more than one hundred thousand dollars ($100,000) or both.

SECTION 4. That Chapter 8, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-803, Idaho Code, and to read as follows:

18-803. ARSON IN THE SECOND DEGREE -- BURNING OF A STRUCTURE -- PENALTIES. Any person who willfully and unlawfully, by fire or explosion, damages any structure, whether the property of the actor or another, not included or described in the preceding section, is guilty of arson in the second degree, and upon conviction thereof shall be sentenced to the custody of the department of correction for not more than fifteen (15) years or fined not more than seventy-five thousand dollars ($75,000) or both.

SECTION 5. That Chapter 8, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-804, Idaho Code, and to read as follows:

18-804. ARSON IN THE THIRD DEGREE -- BURNING OF REAL OR PERSONAL PROPERTY OR FOREST LAND -- PENALTIES. Any person who willfully and unlawfully, by fire or explosion, damages:

(1) Any real or personal property of another; or

(2) Any forest land;

is guilty of arson in the third degree, and upon conviction thereof shall be sentenced to the custody of the department of correction for not more than ten (10) years or fined not more than fifty thousand dollars ($50,000) or both.

SECTION 6. That Chapter 8, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-805, Idaho Code, and to read as follows:

18-805. AGGRAVATED ARSON -- PENALTIES. A person whose violation of sections 18-802, 18-803 or 18-804, Idaho Code, results, directly or indirectly, in great bodily harm, permanent disability, permanent disfigurement or death of a firefighter or any other person, regardless of intent or lack of intent to cause such harm, upon a finding of guilt thereon shall be sentenced to an extended term of imprisonment. The extended term of imprisonment shall be computed by increasing the sentence imposed for a conviction under such sections, by a period of not more than ten (10) years.

SECTION 7. That Sections 18-801, 18-802, 18-803, 18-804, 18-805, 18-7003, 18-7006 and 18-7007, Idaho Code, be, and the same are hereby repealed.

Approved March 22, 1993.

CHAPTER 108
(H.B. No. 260)

AN ACT

RELATING TO THE ASSESSMENTS OF CORPORATIONS ORGANIZED TO OPERATE, MAINTAIN, AND MANAGE AN IRRIGATION PROJECT OR CANAL SYSTEM; AMENDING SECTION 42-2201, IDAHO CODE, TO ALLOW OPERATION AND MAINTENANCE ASSESSMENTS TO BE BASED UPON A FIXED AMOUNT PER SHARE TO COVER FIXED COSTS AND THE STOCKHOLDER'S ENTITLEMENT TO A MINIMUM AMOUNT OF WATER PER SHARE, AS WELL AS AN ADDITIONAL AMOUNT FOR EXTRA WATER ESTIMATED AS NECESSARY TO MEET THE CROP REQUIREMENTS, WHICH ADDITIONAL COSTS FOR EXTRA WATER COULD INCLUDE ENERGY COSTS OR MAY BE ANY OTHER METHOD OF ASSESSMENT, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 22, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-2201A, IDAHO CODE, AUTHORIZING BOARDS OF DIRECTORS OF CERTAIN CORPORATIONS TO MAKE NO ASSESSMENT OR A LESSER ASSESSMENT AGAINST CORPORATE STOCK REPRESENTING WATER APPURTENANT TO FEDERAL CROPLAND SET-ASIDE PROGRAM ACRES OR STOCK APPURTENANT TO PARCELS OF FIVE ACRES OR LESS WHERE THE STOCKHOLDER RESIDES AND WHERE THE WATER CANNOT BE USED, AUTHORIZING THE ACREAGE OWNER TO ASSIGN UP TO FIVE SHARES OF STOCK TO THE CORPORATION AND INDEMNIFY THE CORPORATION FROM OUTSTANDING LIENS SO AS TO AVOID FUTURE ASSESSMENTS, AND ALLOWING CERTAIN IRRIGATION CORPORATIONS TO COLLECT FOR EXTRA WATER DELIVERIES AND REFUND FOR LESSER DIVERSIONS, INCLUDING INTEREST AT TWELVE PERCENT PER ANNUM FOR SUCH UNDERAGES AND OVERAGES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-2201, Idaho Code, be, and the same is hereby amended to read as follows:

42-2201. MAINTENANCE CHARGES -- RIGHT TO COLLECT -- BASIS OF ASSESSMENT -- LIEN. Any corporation heretofore organized or any corporation that shall hereafter be organized for the operation, control or management of an irrigation project or canal system, or for the purpose of furnishing water to its shareholders, and not for profit or hire, the control of which is actually vested in those entitled to the use of the water from such irrigation works for the irrigation of the lands to which the water from such irrigation works is appurtenant, shall have the right to levy and collect from the holders or owners of all land to which the water and water rights belonging to or diverted by said irrigation works are dedicated or appurtenant regardless of whether water is used by such owner or holder, or on or for his land; and also from the holders or owners of all other land who have con-

tracted with such company, corporation or association of persons to furnish water on such lands, regardless of whether such water is used or not from said irrigation works, reasonable administrative charges, tolls, assessments and charges for the purpose of maintaining and operating such irrigation works and conducting the business of such company, corporation or association and meeting the obligations thereof, which tolls, assessments and charges shall, after projecting the revenue to be derived from an administrative charge of not to exceed ten dollars ($10.00) to be levied against each holder of a stock certificate of the company~~,~~:

(1) B~~b~~e equally and ratably levied and may be based upon the number of shares or water rights held or owned by the owner of such land as appurtenant thereto; or

(2) M~~m~~ay be based upon the amount of water used~~;-and~~ or said tolls, assessments and charges may be based on:

(a) A combination of a charge of a fixed amount per share for annual operation and maintenance and a charge for a fixed minimum amount of water per share, whether used or not, plus an additional charge based on the estimated amount of water to be delivered over the minimum, as requested by the farmer, including the energy costs of said excess delivery; or

(b) A combination of a charge for energy costs, based on the amount of water delivered, and a separate charge for all other operation and maintenance costs, based on the number of shares or water rights; or

(3) May be based upon any other method of assessment fairly allocating the costs of operating and maintaining the irrigation works which has been approved by the affirmative vote of at least two-thirds (2/3) of the shares entitled to vote at any annual, regular or special meeting of the shareholders at which the question of approving the method of assessment is brought properly before the meeting.

S~~s~~uch company, corporation or association of persons shall have a first and prior lien, except as to the lien of taxes, upon the land to which such water and water rights are appurtenant, or upon which it is used, said lien to be perfected, maintained and foreclosed in the manner set forth in this chapter: provided, that any right to levy and collect tolls, administrative charges, assessments and charges by any person, company of persons, association or corporation, or the right to a lien for the same, which does or may hereafter otherwise exist, is not impaired by this chapter.

SECTION 2. That Chapter 22, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-2201A, Idaho Code, and to read as follows:

42-2201A. AUTHORIZATION FOR OTHER ASSESSMENT. The board of directors of a corporation which utilizes section 42-2201, Idaho Code, as the basis of their water stock assessments, after direction by a resolution of a majority of the stockholders at the annual meeting, may:

(1) Make no assessment, or a lesser assessment against:

(a) Shares of corporate stock representing water appurtenant to acres contracted in a federal cropland set-aside program;

(b) Shares of stock appurtenant to parcels of five (5) acres or less where the stockholder maintains his principal residence and where water cannot be delivered through no fault of the irrigation entity or the stockholder; or

(c) Accept an assignment of up to five (5) shares of the corporation's stock appurtenant to parcels of five (5) acres or less where the stockholder maintains his principal residence and where water cannot be delivered through no fault of the irrigation entity or the stockholder, provided the stockholder will assign ownership of the shares to the corporation together with a title insurance policy or an executed indemnification protecting the corporation from outstanding liens.

(2) To assess and collect for extra water diverted over and above the amount originally estimated and paid for pursuant to the corporation's assessment pursuant to section 42-2201, Idaho Code, which extra water was diverted during the irrigation season, by mailing a supplemental assessment at the end of the irrigation season to collect for extra water diverted which was in excess of preseason estimates, to refund as necessary or credit against future assessments if the final charge is less than the amount previously paid. The board of directors collects or pays interest on overages and underages as appropriate from the due date of the supplemental assessment. Interest on said overages and underages shall not exceed twelve percent (12%) per annum.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 1993.

CHAPTER 109
(H.B. No. 295)

AN ACT

RELATING TO COMPENSATION OF COMMISSIONERS OF COUNTY-WIDE HIGHWAY DISTRICTS; AMENDING SECTION 40-1404, IDAHO CODE, TO PROVIDE A MONTHLY SALARY FOR HIGHWAY DISTRICT COMMISSIONERS; AND AMENDING SECTION 40-1314, IDAHO CODE, TO REVISE THE COMPENSATION SCHEDULE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-1404, Idaho Code, be, and the same is hereby amended to read as follows:

40-1404. APPOINTMENT OF FIRST HIGHWAY DISTRICT COMMISSIONERS -- SUBDISTRICTS -- ELECTIONS, TERMS AND SALARIES OF COMMISSIONERS. If there is a majority affirmative vote at the election the county commissioners, at their next meeting shall organize the county-wide highway district. The county shall be subdivided by the county commissioners into three (3) subdistricts, designated subdistricts number one,

two and three, as nearly equal in population as practicable, and one (1) highway commissioner shall represent each subdistrict and be a resident of the subdistrict. The governor shall appoint the first county-wide highway district commissioners. Where one (1) or more highway districts have been in existence at the time of the creation of the county-wide highway district, the governor shall appoint, whenever practicable, at least one (1) of the former highway district commissioners as they shall qualify by reason of residence in the territorial limits of the subdistricts of the county-wide highway district as a commissioner of the county-wide highway district. County commissioners and city council members shall not be eligible to hold office as a county-wide highway district commissioner. The originally appointed commissioners shall serve until the next general election when two (2) members shall be elected for two (2) years and one (1) member shall be elected for a term of four (4) years, the commissioner from subdistrict number one being elected for a term of four (4) years. The four (4) year term shall be allotted thereafter in rotation to subdistricts number two, three and one. A qualified voter of the county-wide highway district shall be eligible to vote for each of the county-wide highway district commissioners, and the election shall be conducted as provided by Idaho statutes relating to holding elections at the county level.

The highway commissioners shall take office on January 1 of the year immediately following their election, and each may receive a salary not to exceed ~~four~~ six hundred dollars ($~~4~~600) per calendar month with the exception of the president of the highway commissioners who may receive a salary not to exceed ~~five~~ seven hundred dollars ($~~5~~700) per calendar month.

SECTION 2. That Section 40-1314, Idaho Code, be, and the same is hereby amended to read as follows:

40-1314. COMPENSATION OF HIGHWAY DISTRICT COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES. (1) The highway district commissioners ~~shall~~ may be compensated ~~as provided by section 59-509(g), Idaho Code~~ forty dollars ($40.00) for each day in the actual performance of duties, but the total amount to be received as compensation shall not exceed the sum of ~~two~~ three thousand ~~five hundred~~ dollars ($~~2~~53,000) per year. Actual expenses shall be paid in addition to their compensation. The payment for expenses shall be paid from the funds of the highway district upon the presentation of itemized vouchers, signed by the commissioners and under oath made to the secretary of the district.

(2) When a commissioner is an officer and/or agent of the district, the two (2) remaining commissioners may fix the compensation to be paid him for his services as an officer and/or agent. A commissioner acting as an officer and/or agent of the district shall be entitled to his necessary and actual expenses in addition to his salary, but shall not be entitled to draw compensation as a commissioner when placed upon a salary. The board shall fix the compensation to be paid to the other officers and agents and employees of the highway district, to be paid out of the treasury of the highway district.

(3) Commissioners are considered employees of the district. The

district shall be liable and responsible for the actions of the commissioners, officers, agents and/or employees of the district when the commissioners, officers, agents and/or employees are performing their duties on behalf of the district.

Approved March 22, 1993.

CHAPTER 110
(H.B. No. 75)

AN ACT

RELATING TO THE PRACTICE OF OPTOMETRY; AMENDING SECTION 54-1501, IDAHO CODE, TO FURTHER DEFINE THE PRACTICE OF OPTOMETRY AS GOVERNED BY THE STATE BOARD OF OPTOMETRY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1501, Idaho Code, be, and the same is hereby amended to read as follows:

54-1501. PRACTICE OF OPTOMETRY DEFINED. Optometry is defined as the science which relates to the examination of the eyes, the analysis of their function and the employment of preventive or corrective measures to insure maximum vision and comfort. The practice of optometry is declared to be a learned profession. The practice of optometry affects the public health, welfare and safety and the public interest requires regulation and control of the practice of optometry and limitation of the practice to qualified persons. Any person, not expressly exempted from the provisions of this chapter, shall be deemed to be practicing optometry within the meaning of this chapter who shall:

1. Engage in the profession of examining, testing, measuring, treating, correcting, developing, or improving the human visual apparatus;

2. Display any sign, circular, advertisement, or device purporting or offering in any manner to examine eyes, test eyes, fit glasses, adjust frames or prescribe lenses, or by any means or method set himself forth as an optometrist, doctor of optometry, optical doctor, doctor of optical science, O.D., Opt. D., optician, optical specialist, eye specialist, or refractionist, or any other designation of like import, with intent to induce people to patronize himself or any other persons for examination, diagnosis, development, or correction of the human visual apparatus;

3. Employ in the examination, diagnosis, or treatment of another, any means, including the use of ~~topically applied~~ diagnostic pharmaceutical agents~~, but excluding~~ <u>and</u> pharmaceutical agents for therapeutic use, for the measurement, improvement, or development of any or all functions of human vision or the assistance of the powers of range of human vision or the determination of the accommodative or refractive status of human vision or the scope of its functions in general. ~~Provided--however,--notwithstanding the provisions of this subsection,~~ ~~t~~<u>T</u>he state board of optometry may, pursuant to regulations adopted by

t, issue a certificate to optometrists licensed in this state authorizing the optometrist to prescribe, administer and dispense such ~~topically applied~~ therapeutic pharmaceutical ~~ophthalmic~~ agents for the treatment of conditions of the eye and/or eyelid, as ~~jointly agreed~~ upon approved by the board of optometry ~~and either the board of medicine or the board of pharmacy~~ and as identified in rules and regulations adopted by the board of optometry. Such certificate shall only be issued to an optometrist who: (1) has successfully passed the "treatment and management of ocular disease" section of the optometrist examination approved by the international association of boards of ~~examination~~ examiners in optometry, inc. or an equivalent examination as may be approved by the state board of optometry; (2) is the holder of a certificate for the use of diagnostic pharmaceutical agents issued by the state board of optometry; and (3) has completed such appropriate additional educational and clinical experience requirements as shall be established by the state board of optometry pursuant to section 54-1509, Idaho Code~~; Nothing contained herein shall be construed to authorize the use of beta blockers except in consultation with a physician licensed pursuant to chapter 18, title 54, Idaho Code~~;

4. Sell or offer for sale, otherwise than on prescription, any lens with spherical, prismatic or cylindrical power for the aid of human vision;

5. Prescribe or adapt lenses, including contact lenses, exercises, orthoptics, vision therapy, or other physical means to correct defects or adjust human vision to the conditions of a special occupation; or

6. Do or offer to do any of the foregoing with intent of receiving therefor, either directly or indirectly, any fee, gift, remuneration, or compensation whatsoever.

Approved March 22, 1993.

CHAPTER 111
(S.B. No. 1052)

AN ACT

RELATING TO TEACHERS; AMENDING SECTION 33-1208, IDAHO CODE, TO PROVIDE FOR THE INVESTIGATION OF AN ALLEGATION OF INAPPROPRIATE CONDUCT BY A TEACHER WHETHER OR NOT THE TEACHER HAS SURRENDERED HIS CERTIFICATE WITHOUT A HEARING OR FAILED TO RENEW THE CERTIFICATE, TO PROVIDE FOR THE DENIAL OF A CERTIFICATE IF IT WAS FOUND THAT INAPPROPRIATE CONDUCT OCCURRED, AND TO MAKE TECHNICAL CORRECTIONS.

e It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1208, Idaho Code, be, and the same is hereby amended to read as follows:

33-1208. REVOCATION, SUSPENSION OR DENIAL OF CERTIFICATE -- GROUNDS. 1. The state board of education may revoke or suspend any

certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

a. Gross neglect of duty;

b. Incompetency;

c. Breach of the teaching contract;

d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;

e. Revocation, suspension, denial or surrender of a certificate in another state for any reason constituting grounds for revocation in this state;

f. Conviction, finding of guilt, withheld judgment or suspended sentence, in this or any other state of a crime involving moral turpitude;

g. Conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state for the delivery, manufacture or production of controlled substances or simulated controlled substances as those terms are defined in section 37-2701, Idaho Code;

h. A guilty plea or a finding of guilt, notwithstanding the form of the judgment or withheld judgment in this or any other state, of the crime of involuntary manslaughter, section 18-4006 2. or section 18-4006 3., Idaho Code;

i. Any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known at the time of its issuance or authorization;

j. Wilful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

k. The kidnapping of a child, section 18-4503, Idaho Code.

2. The state board of education shall permanently revoke any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, and shall deny the application for issuance of a certificate of a person who pleads guilty to or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child:

a. The aggravated assault of a child, section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, section 18-909, Idaho Code.

b. The aggravated battery of a child, section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, section 18-911, Idaho Code.

c. The injury or death of a child, section 18-1501, Idaho Code.

d. The sexual abuse of a child under sixteen (16) years of age, section 18-1506, Idaho Code.

e. The ritualized abuse of a child under eighteen (18) years of age, section 18-1506A, Idaho Code.

f. The sexual exploitation of a child, section 18-1507, Idaho Code.

g. Possession of photographic representations of sexual conduct involving a child, section 18-1507A, Idaho Code.

h. Lewd conduct with a child under the age of sixteen (16) years, section 18-1508, Idaho Code.

i. The sale or barter of a child for adoption or other purposes,

section 18-1511, Idaho Code.

j. The murder of a child, section 18-4003, Idaho Code, or the voluntary manslaughter of a child, section 18-4006 1., Idaho Code.

k. The kidnapping of a child, section 18-4502, Idaho Code.

l. The importation or exportation of a juvenile for immoral purposes, section 18-5601, Idaho Code.

m. The abduction of a person under eighteen (18) years of age for prostitution, section 18-5610, Idaho Code.

n. The rape of a child, section 18-6101 or 18-6108, Idaho Code.

The general classes of felonies listed in ~~this~~ subsection ~~(~~2.~~)~~ of this section shall include equivalent laws of federal or other state jurisdictions. For the purpose of this subsection, "child" means a minor or juvenile as defined by the applicable state or federal law.

3. The state board of education may investigate and follow the procedures set forth in section 33-1209, Idaho Code, for any allegation of inappropriate conduct as defined in this section, by a holder of a certificate whether or not the holder has surrendered his certificate without a hearing or failed to renew his certificate. In those cases where the holder of a certificate has surrendered or failed to renew his certificate and it was found that inappropriate conduct occurred, the board shall record such findings in the permanent record of the individual and shall deny the issuance of a teaching certificate.

~~3~~4. Any person whose certificate may be or has been revoked, suspended or denied under the provisions of this section shall be afforded a hearing according to the provisions of section 33-1209, Idaho Code.

~~4~~5. The state board may deny the issuance of a certificate for any reason that would be a ground for revocation or suspension.

Approved March 22, 1993.

CHAPTER 112
(S.B. No. 1153, As Amended)

AN ACT

RELATING TO POWERS OF COUNTY COMMISSIONERS AND MEDICAL CLINICS; AMENDING SECTION 31-3502, IDAHO CODE, TO AMEND THE DEFINITION OF "HOSPITAL"; AMENDING SECTION 31-3503, IDAHO CODE, TO AUTHORIZE COUNTY COMMISSIONERS TO PROVIDE FOR MEDICAL CLINICS AND MEDICAL CLINIC GROUNDS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-3513, IDAHO CODE, TO PROVIDE FOR BONDING FOR MEDICAL CLINICS AND MEDICAL CLINIC GROUNDS; AMENDING SECTION 31-3514, IDAHO CODE, TO PROVIDE FOR MANAGEMENT OF MEDICAL CLINICS; AND AMENDING SECTION 31-3607, IDAHO CODE, TO AUTHORIZE COUNTY HOSPITAL BOARDS TO MANAGE OTHER FACILITIES OR PROPERTY UNDER ITS MANAGEMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-3502, Idaho Code, be, and the same is hereby amended to read as follows:

31-3502. DEFINITIONS. As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning:

(1) "Medically indigent" means any person who is in need of hospitalization and who, if an adult, together with his or her spouse, or whose parents or guardian if a minor, does not have income and other resources available to him from whatever source which shall be sufficient to enable the person to pay for necessary medical services. Nothing in this definition shall preclude the board of county commissioners from requiring medically indigent persons to reimburse the county for all or a portion of their medical expenses, when investigation of their application pursuant to this chapter, determines their ability to do so.

(2) "Hospital" means a facility licensed ~~as such in Idaho providing community service for in-patient, medical and/or surgical care of acute illness or injury and/or obstetrics,~~ and regulated pursuant to sections 39-1301 through 39-1314, Idaho Code, excluding state institutions.

(3) "Dependent" means any person whom a taxpayer could claim as a dependent under the income tax laws of the state of Idaho.

(4) "Reimbursement rates" mean the unadjusted medicaid rate of reimbursement for medical charges allowed pursuant to title XIX of the social security act, as amended. For long term care facilities, maximum "reimbursement rates" mean the unadjusted medicaid rate of reimbursement allowed pursuant to the medical assistance program as determined by chapter 1, title 56, Idaho Code, or the unadjusted medicare rate of reimbursement established under title XVIII of the social security act, as amended, whichever is greater.

(5) "Board" means the board of county commissioners.

(6) "Sick" means any person affected with disease or who is unable to care for himself and who does not have the means to provide for his own support, but who does not necessarily require the services of a hospital as defined in subsection (2) of this section.

(7) "Indigent" means any person who is destitute of property and unable to provide for the necessities of life.

(8) "County hospital" means any county approved institution or facility for the care of sick persons.

(9) "Administrator" means the board of the catastrophic health care cost program, as provided in section 31-3517, Idaho Code.

(10) "Catastrophic health care costs" mean all medical expenses for which an applicant for relief under this chapter or any third party are not liable and which are incurred by a recipient, and not paid for or reimbursed by third party payers, during any twelve (12) month period, which exceed in aggregate the sum of ten thousand dollars ($10,000).

(11) "Recipient" means an individual determined eligible for county medical assistance under uniform county guidelines on indigent eligibility adopted by the administrator pursuant to law.

(12) "Residency" or "residence", as used in this chapter, means a physical presence with a home, house, place of abode, place of habitation, dwelling or place where one actually lives.

SECTION 2. That Section 31-3503, Idaho Code, be, and the same is

hereby amended to read as follows:

31-3503. POWERS AND DUTIES OF BOARDS OF COUNTY COMMISSIONERS. The boards of county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law:

(1) Care for and maintain the medically or otherwise indigent, and may provide for the care of other sick persons as provided in this chapter, and for this purpose said boards are authorized to levy an ad valorem tax not to exceed ten one-hundredths of one percent (0.10%) of the market value for assessment purposes of all taxable property in the county. Such levy shall be exempt from the limitation imposed in section 63-923(1), Idaho Code, and the moneys derived from such levy shall be exempt from the limitation imposed in section 63-2220, Idaho Code.

(2) Have the jurisdiction and power to provide county hospitals and public general hospitals for the county and others who are sick, injured, maimed, aged and infirm and to erect, enlarge, purchase, lease, or otherwise acquire, and to officer, maintain and improve hospitals, hospital grounds, nurses' homes, shelter care facilities and residential care homes as defined in section 39-3301, Idaho Code, superintendent's quarters, medical clinics, as that term is defined in section 39-1319, Idaho Code, medical clinic grounds or any other necessary buildings, and to equip the same, and to replace equipment, and for this purpose said boards may levy an additional tax of not to exceed three (3) mills on the dollar. The terms public general hospitals as used in this subsection shall be construed to include nursing homes.

SECTION 3. That Section 31-3513, Idaho Code, be, and the same is hereby amended to read as follows:

31-3513. ELECTION FOR ISSUANCE OF BONDS. The county commissioners may, when they deem the welfare of their counties require it, or when petitioned thereto by a number of resident taxpayers of their respective counties equal to five per cent (5%) of the number of persons voting for the secretary of state of the state of Idaho, at the election next preceding the date of such petition, submit to the qualified electors of said county at any general election, or at a special election called for such purpose, the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing such hospital, hospital grounds, nurses' homes, nursing homes, residential care homes, shelter care facilities, medical clinics, superintendent's quarters, or any other necessary buildings, and equipment, and may on their own initiative submit to the qualified electors of the county at any general election the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing for the extension and enlargement of existing hospital, hospital grounds, nurses' homes, nursing homes, residential care homes, shelter care facilities, medical clinics or grounds, superintendent's quarters, or any other necessary buildings, and equipment, and when authorized thereto by two-thirds (2/3) vote at such election, shall issue and sell such coupon bonds and use the pro-

ceeds therefrom for the purposes authorized by such election. Said proposition may be submitted to the qualified electors at a special election called for the purpose if the board of county commissioners shall by resolution so determine. No person shall be qualified to vote at any election held under the provisions of this section unless he shall possess all the qualifications required of electors under the general laws of this state.

The board shall be governed in calling and holding such election and in the issuance and sale of such bonds, and in the providing for the payment of the principal and interest thereon by the provisions of sections 31-1901 through 31-1909, Idaho Code, and by the provisions of chapter 2, title 57, Idaho Code; provided, however, that when such bonds have been issued and sold and a period of two (2) years or more has elapsed from the date of sale of said bonds and for any reason the proceeds from the sale of said bonds or other moneys appropriated for the purpose for which said bonds were issued, have not been used for the purpose for which they were appropriated or said bond issue made, the board may, with the written consent of all of the bondholders first having been obtained, submit to the qualified electors, as herein defined, the question of spending such moneys for a definite purpose. The purpose for which it is decided to spend such moneys shall be clearly and plainly stated on the ballot. If a majority of the qualified electors shall vote in favor of spending such moneys for the purpose stated, the board of county commissioners shall proceed in the same manner as if such different purpose had been the original purpose for such bond issue or appropriation. Provided, further that if less than a majority of the qualified electors shall vote in favor of spending such moneys for such different purpose, or if no such election should be had, when all of the bonds shall have been retired, such excess moneys shall be placed in the general fund.

SECTION 4. That Section 31-3514, Idaho Code, be, and the same is hereby amended to read as follows:

31-3514. INTERNAL MANAGEMENT -- ACCOUNTS AND REPORTS. Such ~~hospital, nursing home, residential care home, or shelter care~~ facility<u>ies as referred to in section 31-3503(2), Idaho Code,</u> may suitably provide for and accept other patients and must charge and accept payments from such other patients as are able to make payments for services rendered and care given. The board of county commissioners may make suitable rules and regulations for the management and operation of such ~~hospital~~ property by a suitable board of control, or otherwise, or for carrying out such hospital uses and purposes under a lease of the same.

The boards or officers or lessees of such hospital property shall render accounts and reports to the county commissioners as may be required by the board; and shall render accounts and deliver over any and all moneys received by them for the county to the county treasurer to be credited to the operation expense of hospitals and indigent sick and otherwise dependent poor of the county in such manner as provided by law for the handling of funds of this kind.

Said board of control may permit persons from out of the county where such hospital is located to be admitted for hospitalization to such hospital. As to such cases special rates for the use and service

of such hospital may be provided which rates shall apply equally to all such patients who do not pay taxes within the county where such hospital is located. The purpose of providing such special rates shall be to compel persons living out of the county where such hospital is located, and who receive hospitalization in such hospital, to bear a just burden of the cost of construction and maintenance of such hospital.

SECTION 5. That Section 31-3607, Idaho Code, be, and the same is hereby amended to read as follows:

31-3607. DUTIES OF BOARD. (a) Fiscal Affairs. -- The county hospital board shall be charged with the care, custody, upkeep, management and operation of all property belonging to the county and devoted to ~~hospital~~ the purposes provided in sections 31-3501 and 31-3503, Idaho Code, and shall be responsible for all moneys received by it, including all revenues from ~~hospital~~ the operation of such property, all moneys received by tax levies for ~~hospital~~ operation of such property, and all moneys received from whatever source, by contribution or otherwise, for ~~hospital operation~~ such purposes: Provided, that if any contribution of money or property be offered to the hospital board of the county for use for a specific ~~hospital~~ purpose the hospital board may, if it deems it for the best interest of the hospital or other facility or property under its management, accept such contribution and use such contribution for such purpose.

(b) Funds -- Custody and Disbursement. -- The hospital board shall safely keep or cause to be kept all moneys coming into the care, custody or possession of the board in strict compliance with the public depository law of this state, and shall pay out such money for valid bills and obligations of the hospital, and shall keep or cause to be kept proper records in its minutes of all its proceedings and all business transactions and proper accounts of all moneys received by it, expended and on hand. The minutes of the board shall be open to inspection by any taxpayer or elector of the county during all regular office hours.

(c) Reports. -- The county hospital board shall report to the board of county commissioners within thirty (30) days after the acceptance of the annual hospital audit after the close of the fiscal year and shall annually publish in one (1) issue of a newspaper having general circulation in the county a financial statement reflecting the financial operations of the hospital, together with such other information as the board of county commissioners may deem necessary for the information of the people of the county. The county hospital board shall also prepare in its regular course of business unaudited monthly financial reports reflecting the financial operations of the hospital. The county hospital board shall provide a copy of those monthly reports to the member of the board of commissioners serving as an ex officio member of the county hospital board.

(d) Limitations. -- The county hospital board subject to the budgetary limitations herein contained may acquire or build other property for ~~hospital~~ the purposes provided in sections 31-3501 and 31-3503, Idaho Code, or improve, remodel, enlarge, reduce, or dispose of property being used for ~~hospital--operation~~ such purposes. The

county hospital board shall not have power to create any indebtedness in excess of the amount of its annual budget as approved by the board of county commissioners: Provided, that if the county hospital board be formed after the time fixed by law for adoption of the budget, it may then formulate and submit to the board of county commissioners a budget for the rest of the current year, which budget, however, shall not provide for expenditure or creation of indebtedness in an amount greater than the estimated income for that year, together with any receipts from taxes specially levied for hospital purposes in such year.

Approved March 22, 1993.

CHAPTER 113
(S.B. No. 1071)

AN ACT

RELATING TO INSURANCE COVERAGE; AMENDING SECTIONS 41-2144, 41-2218, 41-3441, 41-3936 AND 41-4025, IDAHO CODE, TO PROVIDE AN EXCEPTION FROM MANDATORY COVERAGE FOR CERTAIN INSURANCE; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-2144, Idaho Code, be, and the same is hereby amended to read as follows:

41-2144. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all disability contracts which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

(a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.

(b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.

(c) A mammogram every year for any woman who is fifty (50) years of age or older.

(d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident, specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

SECTION 2. That Section 41-2218, Idaho Code, be, and the same is

hereby amended to read as follows:

41-2218. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all group or blanket disability insurance policies which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

(a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.

(b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.

(c) A mammogram every year for any woman who is fifty (50) years of age or older.

(d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident, specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

SECTION 3. That Section 41-3441, Idaho Code, be, and the same is hereby amended to read as follows:

41-3441. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all group subscriber's contracts which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

(a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.

(b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.

(c) A mammogram every year for any woman who is fifty (50) years of age or older.

(d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident, specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

SECTION 4. That Section 41-3936, Idaho Code, be, and the same is

hereby amended to read as follows:

41-3936. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all health maintenance organization policies, contracts, plans or certificates which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

(a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.

(b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.

(c) A mammogram every year for any woman who is fifty (50) years of age or older.

(d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident, specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

SECTION 5. That Section 41-4025, Idaho Code, be, and the same is hereby amended to read as follows:

41-4025. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all self-funded plans which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

(a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.

(b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.

(c) A mammogram every year for any woman who is fifty (50) years of age or older.

(d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident, specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

SECTION 6. This act shall be in full force and effect on and

after July 1, 1993.

Approved March 22, 1993.

CHAPTER 114
(S.B. No. 1187)

AN ACT
RELATING TO THE DEFINITION OF FOOD ESTABLISHMENTS; AMENDING SECTION 39-1602, IDAHO CODE, TO FURTHER DEFINE FOOD ESTABLISHMENT; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby amended to read as follows:

39-1602. DEFINITIONS. As used in this chapter:

(1) "Food establishment" means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term "food establishment" does not include:

(a) Private homes where food is prepared or served for individual family consumption;

(b) ~~Private--clubs,-fraternal-and-church~~ Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed three (3) consecutive days on no more than two (2) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods;

(c) Bed and breakfast establishments with ten (10) or fewer beds;

(d) Establishments which offer only factory-sealed nonpotentially hazardous foods; and

(e) Agricultural markets.

(2) "Regulatory ~~A~~authority" means the director of the Idaho department of health and welfare or the director's designee.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 1993.

CHAPTER 115
(H.B. No. 386)

AN ACT

APPROPRIATING MONEYS TO THE STATE AUDITOR IN ADDITION TO THE APPROPRIATION MADE BY SECTION 1, CHAPTER 298, LAWS OF 1992; TRANSFERRING MONEYS FROM THE GENERAL FUND TO THE ADMINISTRATIVE CODE FUND, PROVIDING FOR REPAYMENT OF THE AMOUNT OF THE TRANSFER; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made by Section 1, Chapter 298, Laws of 1992, there is hereby appropriated to the State Auditor the following amount, to be expended for the named program according to the designated expense class from the listed funds for the period July 1, 1992, through June 30, 1993:

I. AUDITING AND ACCOUNTING:	
FOR:	
Operating Expenditures	$291,000
FROM:	
General Fund	$ 65,000
Social Security Trust Fund	226,900
TOTAL	$291,900

SECTION 2. There is hereby transferred the sum of $150,000 from the General Fund to the Administrative Code Fund to be expended as provided in Section 67-5205(4), Idaho Code, as added by Chapter 263, Laws of 1992.

SECTION 3. The moneys transferred in Section 2 of this act shall be repaid to the General Fund, whenever possible, from moneys accruing to the Administrative Code Fund.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 1993.

CHAPTER 116
(H.B. No. 3)

AN ACT

RELATING TO REAL ESTATE BROKERS AND SALESMEN; AMENDING SECTION 54-2040, IDAHO CODE, TO INCREASE THE MAXIMUM ALLOWABLE FINE

IMPOSED BY THE IDAHO REAL ESTATE COMMISSION IN DISCIPLINARY ACTIONS, AND TO ALLOW THE REAL ESTATE COMMISSION TO INCLUDE THE IMPOSITION OF COSTS AND ATTORNEY FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2040, Idaho Code, be, and the same is hereby amended to read as follows:

54-2040. REVOCATION OR SUSPENSION OF LICENSE -- GROUNDS THEREFOR. A. The commission may upon its own motion, and shall upon verified complaint in writing of any person claiming to have been injured or defrauded, investigate the action of any person engaged in the business or acting in the capacity of real estate broker or real estate salesman within this state and shall have the power to temporarily suspend or permanently revoke licenses issued under the provisions of this act and/or to impose a civil penalty in an amount not to exceed ~~one~~ five thousand dollars ($~~1~~5,000) and to assess costs and attorney fees against the person for the cost of any investigation and/or administrative or other proceedings upon the licensee at any time where the holder thereof in performing or attempting to perform any of the acts mentioned in section 54-2022, Idaho Code, regardless of whether the acts were for his own account or in his capacity as a broker or salesman, is guilty of (a) making any fraudulent misrepresentations; or, (b) a continued or flagrant course of misrepresentation or making of false promises whether through agents or salesmen; or, (c) failure to account for or remit any property or moneys coming into his possession which belong to another; or, (d) failure to keep adequate records of all property transactions in which he acts in the capacity of real estate broker or real estate salesman; or, (e) failing or refusing upon demand to disclose any information within his knowledge, or to produce any documents, books, or records in his possession for inspection by the commission or its authorized representatives when acting within the jurisdiction or by authority of law; or, (f) employment of fraud, deception, misrepresentation, misstatement or any unlawful means in applying for or securing a license to act as real estate broker or salesman in the state of Idaho; or, (g) acting as a real estate broker or salesman under an assumed name; or, (h) violation of any provision of sections 54-2021 to 54-2053, Idaho Code, or any of the rules and regulations made or promulgated by the real estate commission, or final order of the commission; or, (i) any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings; or, (j) the use by a licensee of any provision allowing the licensee an option to purchase in any agreement authorizing or employing such licensee to sell, buy, list or exchange real estate for compensation or commission, except when such licensee, prior to or coincident with entering into such agreement, discloses in writing to his principal the purpose for which the property will be purchased, that the licensee is licensed, and such other information as the commission may require by rule.

B. The commission may also temporarily suspend or permanently revoke a license where the holder thereof (a) is convicted of a felony

in a state or federal court, or is convicted of any crime involving moral turpitude. The record of conviction, or a certified copy thereof, certified by the clerk of the court, or the judge in whose court the judgment was had, shall be prima facie evidence of conviction in such cases; (b) is declared insane by a court of competent jurisdiction; provided, however, that when a license shall have been revoked or suspended for this cause, such license may be reactivated by the commission upon a declaration of sanity being made; (c) has a judgment entered against him in a civil action upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required.

C. The commission may also temporarily suspend or permanently revoke a license of a broker or salesman where the license of such licensee, issued by another jurisdiction, is suspended or revoked for acts or omissions which would be grounds for suspension or revocation under chapter 20, title 54, Idaho Code. A certified copy of the findings of fact, conclusions of law, memorandum opinion and/or final order from the appropriate administrative agency or court shall be prima facie evidence of the suspension or revocation and the facts stated therein.

D. If the commission temporarily suspends or permanently revokes a license, and/or imposes a civil penalty, the commission may withhold execution of said suspension, revocation and/or civil penalty on such terms and for such time as it may prescribe.

E. In the event of the revocation or suspension of the broker's license issued to the designated broker of a partnership or corporation, the license issued to such partnership or corporation shall be revoked or suspended by the commission. However, the commission may withhold execution of the revocation or suspension on such terms and for such time as it may prescribe.

F. All civil penalties collected by the commission under the provisions of this chapter shall be deposited in the state treasury to the credit of the special real estate account established pursuant to section 54-2037, Idaho Code.

Approved March 22, 1993.

CHAPTER 117
(H.B. No. 29)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-348, IDAHO CODE, TO ALLOW THE DISTRIBUTION OF BUSINESS LISTS DEVELOPED BY THE IDAHO DEPARTMENT OF AGRICULTURE, DIVISION OF MARKETING AND DEVELOPMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-348, Idaho Code, be, and the same is hereby amended to read as follows:

9-348. PROHIBITION ON DISTRIBUTION OR SALE OF MAILING OR TELE-

PHONE NUMBER LISTS -- PENALTY. (1) Except as provided in subsections (2), (3), (4), (5) and (6) of this section, in order to protect the privacy of those who deal with public agencies:

(a) No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agriculture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

(7) If a court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the court in an amount not in excess of one thousand dollars ($1,000) which shall be paid into the general account.

Approved March 22, 1993.

CHAPTER 118
(H.B. No. 38, As Amended)

AN ACT

RELATING TO THE TAX ON INSURANCE PREMIUMS; AMENDING SECTION 41-406, IDAHO CODE, TO PROVIDE THAT THE PORTION OF THE PREMIUM TAX NECESSARY TO COVER ADMINISTRATIVE COSTS INCURRED BY THE DEPARTMENT IN PLACING INSURANCE COMPANIES OR ANY OTHER INSURANCE ENTITIES INTO

RECEIVERSHIP OR UNDER ADMINISTRATIVE SUPERVISION, AND SUCH COSTS CANNOT BE SATISFIED FROM THE ASSETS OF THESE COMPANIES OR ENTITIES, SHALL BE DISTRIBUTED TO THE INSURANCE INSOLVENCY ADMINISTRATIVE ACCOUNT WHICH IS HEREBY CREATED, AND TO PROVIDE FOR AN APPROPRIATION TO THE INSURANCE INSOLVENCY ADMINISTRATIVE ACCOUNT AN AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS IN ANY ONE FISCAL YEAR FOR THE PAYMENT OF THE DEPARTMENT'S ADMINISTRATIVE EXPENSES INCURRED IN CARRYING OUT RECEIVERSHIPS AND ADMINISTRATIVE SUPERVISIONS, AND TO PROVIDE THAT A BALANCE OF ONE HUNDRED THOUSAND DOLLARS SHALL BE MAINTAINED IN THIS ACCOUNT ON JUNE 30 OF EACH YEAR; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-406, Idaho Code, be, and the same is hereby amended to read as follows:

41-406. DEPOSIT AND REPORT OF FEES, LICENSES AND TAXES. (1) The director shall transmit all taxes, fines and penalties collected by him to the state treasurer as provided under section 59-1014, Idaho Code. The director shall file with the state auditor a statement of each deposit thus made. All such funds received shall be deposited into the department of insurance suspense account.

Such funds shall be distributed as follows:

(a) Ten percent (10%) shall be deposited in the insurance refund account which is hereby created for the purpose of repaying overpayments of any taxes, fines, and penalties or other erroneous receipts. There is hereby appropriated out of the insurance refund account so much thereof as shall be necessary for the payment of refunds. Any unencumbered balance remaining in the insurance refund account on June 30 of each and every year in excess of forty thousand dollars ($40,000) shall be transferred to the general account and the state auditor is hereby authorized and directed on such dates to make such transfers unless the board of examiners, which is hereby authorized to do so, changes the date of transfer or sum to be transferred.

(b) That portion of the premium tax, payable to the public employee retirement account as provided in section 59-13~~57~~94, Idaho Code, shall be ~~transferred~~ distributed to that account.

(c) That portion of the premium tax necessary to cover administrative costs incurred by the department in placing insurance companies or any other insurance entities into receivership or under administrative supervision, and such costs cannot be satisfied from the assets of these companies or entities, shall be distributed to the insurance insolvency administrative account which is hereby created. There is hereby appropriated out of the insurance insolvency administrative account so much thereof as shall be necessary, but not to exceed two hundred thousand dollars ($200,000) in any one (1) fiscal year, for the payment of the department's administrative expenses incurred in carrying out such receiverships or supervisions. A balance of one hundred thousand dollars ($100,000) shall be maintained in this account on June 30 of each year.

(d) The balance of the premium tax, fines and penalties shall be ~~transferred~~ distributed to the general account of the state of Idaho.

(~~d~~e) All moneys received for fees, licenses and miscellaneous charges collected shall be ~~transferred~~ distributed to the insurance administrative account.

(2) The director shall make and file with the state auditor an itemized statement of the fees, licenses, taxes, fines and penalties collected by him during the preceding month, and shall deliver a certified copy of the statement to the state treasurer.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 1993.

CHAPTER 119
(H.B. No. 47, As Amended)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1316, IDAHO CODE, TO CLARIFY STATE UNEMPLOYMENT INSURANCE COVERAGE OF AGENT DRIVERS, COMMISSION DRIVERS, AND TRAVELING OR CITY SALESMEN, BY THE ADDITION OF EXPLANATORY LANGUAGE FOUND IN THE FEDERAL INTERNAL REVENUE CODE REGARDING THE FEDERAL EMPLOYMENT TAX COVERAGE OF SUCH EMPLOYEES; AMENDING SECTION 72-1316A, IDAHO CODE, TO PROVIDE THAT THE UNEMPLOYMENT INSURANCE COVERAGE EXEMPTION FOR CHILDREN PERFORMING SERVICES FOR THEIR PARENT OR PARENTS IS EFFECTIVE UNTIL AGE TWENTY-ONE AND TO PROVIDE AN EXEMPTION FOR PARENTS PERFORMING SERVICES FOR THEIR CHILDREN; AMENDING SECTION 72-1346, IDAHO CODE, TO PROVIDE THAT THE RESIDUAL DAILY BALANCE IN THE BENEFIT ACCOUNT MAY BE INVESTED AND THE EARNINGS GENERATED MAY BE USED TO PAY RELATED BANKING COSTS; AMENDING SECTION 72-1368, IDAHO CODE, TO AUTHORIZE THE INDUSTRIAL COMMISSION TO DETERMINE WHEN TRANSCRIPTS SHALL BE PREPARED IN APPEALS TO THE COMMISSION, TO PROVIDE THAT THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT REGARDING CONTESTED CASES AND JUDICIAL REVIEW ARE NOT APPLICABLE TO PROCEEDINGS TO DETERMINE THE BENEFITS RIGHTS OF INDIVIDUALS UNDER THE EMPLOYMENT SECURITY LAW, AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1316, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316. COVERED EMPLOYMENT. (a) The term "covered employment" means an individual's entire service, including service in interstate commerce, performed by him for wages or under any contract of hire, written or oral, express or implied.

(b) Notwithstanding any other provision of state law, services shall be deemed to be in covered employment if with respect to such services a tax is required to be paid or was required to be paid the previous year pursuant to the provisions of the federal unemployment tax act imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or if the director determines that as a condition for full tax credit against the tax imposed by the federal unemployment tax act such services are required to be covered under this act.

(c) Services covered by an election pursuant to section 72-1352, Idaho Code, and services covered by an election duly approved by the director in accordance with an arrangement pursuant to section 72-1344, Idaho Code, shall be deemed to be covered employment during the effective period of such election.

(d) Services performed by an individual for remuneration shall, for the purposes of the employment security law, be covered employment:

(1) Unless it is shown:

(A) That the worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact, and

(B) That the worker is engaged in an independently established trade, occupation, profession, or business;

(2) Even though such individual meets the exemption of subsection (d)(1)(A) and (B) of this section but performs services;

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages, or laundry or dry cleaning services for his principal;

(B) As a traveling or city salesman engaged upon a full-time basis in the solicitation on behalf of, and the transmission to his principal (except for side line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(3) Services shall not be deemed to be in covered employment under the provisions of subsection (d)(2) of this section unless the individual's contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that such individual's services shall not be deemed to be in covered employment if such individual has a substantial investment in facilities used in connection with the performance of such services, other than facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(e) The term "covered employment" shall include an individual's entire service, performed within or both within and without this state,

(1) If the service is localized in this state; or

(2) If the service is not localized in any state but some of the service is performed in this state and

(A) The individual's base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state, or

(B) The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) The term "covered employment" shall include an individual's service, wherever performed within the United States, or Canada, if

(A) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada, and

(B) The place from which the service is directed or controlled is in this state.

(f) The term "covered employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States, (except in Canada) in the employ of an American employer (other than service which is deemed "covered employment" under the provisions of subsection (e) of this section or the parallel provisions of another state's law); if

(1) The employer's principal place of business in the United States is located in this state; or

(2) The employer has no place of business in the United States; but

(A) The employer is an individual who is a resident of this state; or

(B) The employer is a corporation which is organized under the laws of this state; or

(C) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(3) None of the criteria of provision (1) or (2) of this subsection are met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service, under the law of this state;

(4) An "American employer" for purposes of this subparagraph means a person who is:

(A) An individual who is a resident of the United States; or

(B) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(C) A trust if all of the trustees are residents of the United States; or

(D) A corporation organized under the laws of the United

States or of any state;

(5) For purposes of this subsection (f) the term "United States" means the states, the District of Columbia, and the Commonwealth of Puerto Rico, and the Virgin Islands.

SECTION 2. That Section 72-1316A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316A. EXEMPT EMPLOYMENT. The term "exempt employment" means:

(a) Agricultural labor, as defined by section 72-1304, Idaho Code, unless after December 31, 1977, the individual's service was for a person who:

(1) During any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of twenty thousand dollars ($20,000) or more for agricultural labor; or

(2) On each of some twenty (20) days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) individuals in employment in agricultural labor for some portion of the day in which case such service shall be considered service in covered employment.

(b) Service performed as domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless after December 31, 1977, the service was performed for a person who paid wages in cash of one thousand dollars ($1,000) or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year, in which case such service shall be considered covered employment.

(c) (1) Service performed by an individual in the employ of his spouse or child;

(2) Service performed by a person under the age of ~~eighteen (18)~~ twenty-one (21) years in the employ of his father or mother;

(3) Service performed by an individual under the age of twenty-two (22) who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience, except that this subparagraph shall not apply to service performed in a program established at the request of an employer or group of employers.

(d) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act except that, to the extent that the Congress of the United States shall permit states to require any instrumentality of the United States to make payments into a fund under a state unemployment compensation or insurance law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other covered employers, persons, individuals, and services; provided, that if this state shall not be certified for any year by the secretary of labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentality with respect to such year shall be refunded by the

director from the employment security fund in the same manner and within the same period as is provided in section 72-1357, Idaho Code, with respect to contributions erroneously collected.

(e) Service performed in the employ of a governmental entity in the exercise of duties:

(1) As an elected official;

(2) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;

(3) As a member of the state national guard or air national guard;

(4) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(5) In a position which, under or pursuant to the law of this state, is designated as (i) a major nontenured policy making or advisory position, or (ii) a policy making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week.

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(g) Service performed:

(1) In the employ of (i) a church or convention or association of churches, or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or

(2) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or

(3) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(h) Service with respect to which unemployment compensation or insurance is payable under an unemployment compensation system established by an act of congress other than the social security act.

(i) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school chartered or approved pursuant to the state law, and service performed as an intern in the employ of a hospital by an individual who has completed

a course in a medical school chartered or approved pursuant to state law.

(j) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.

(k) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(l) Service performed by an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(m) Service covered by an election duly approved by the agency charged with the administration of any other state or federal employment compensation or unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code, during the effective period of such election.

(n) Service performed in the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.

(o) Service performed in the employ of a hospital by a patient during the time that he is a patient of such hospital.

SECTION 3. That Section 72-1346, Idaho Code, be, and the same is hereby amended to read as follows:

72-1346. EMPLOYMENT SECURITY FUND. (a) Establishment and Control. There is hereby established in the state treasury a special fund, separate and apart from all public moneys or funds of this state, an "Employment Security Fund," which shall be administered by the director exclusively for purposes of this act. All moneys coming into said fund are hereby perpetually appropriated to the director to be by him administered separate and apart from all other moneys and funds of this state pursuant to the provisions of this act and the Federal Social Security Act. This fund shall consist of all contributions collected pursuant to this act, payments in lieu of contributions, interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, all earnings of such property or securities, and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. All financial transactions of the employment security fund shall be maintained on the account level. The state auditor and the state treasurer may prescribe requirements for this purpose.

(b) Accounts and Deposits. The state auditor shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the director, shall be promptly forwarded to the state treasurer for immediate deposit in the clearing account. All moneys in the clearing account after clearance thereof, shall, except as herein otherwise provided, be deposited promptly with the secretary of the treasury of the United

States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Refunds and reimbursements payable pursuant to sections 72-1357, 72-1316(a)(4), Idaho Code, may be paid from the clearing account or the benefit account, except that amounts found to be refundable which were paid into the state employment security administrative and reimbursement account, shall be paid only out of such latter account. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund in the treasury of the United States. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the state treasurer under the direction of the director in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general public depository law of this state; and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund provided for under this act.

(c) Withdrawals. Moneys requisitioned by the director through the treasurer from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to the provisions of this act, except that money credited to this state's account pursuant to section 903 of the Federal Social Security Act, as amended, shall be used exclusively as provided in subsection (e) of this section. The director through the treasurer shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof such moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, nor shall such expenditures require the approval of the state board of examiners. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. All warrants issued for the payment of benefits and refunds shall bear the signature of the director or his duly authorized agent for that purpose. Upon approval and agreement by and between the director and state auditor, amounts in the benefit account

may be transferred to a revolving account established and maintained in a depository bank from which the director may issue checks for the payment of benefits and refunds in accordance with the provisions of this act, and for no other purpose. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in this section, subdivision (b). Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account referred to herein, after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of funds upon discontinuance of unemployment trust fund. The provisions of subsections (a), (b), and (c) of this section, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys belonging to the employment security fund of this state shall be administered by the director as a trust fund for the purpose of paying benefits under this act, and the director shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such administration; provided, that such moneys shall be invested in accordance with the provisions of the State Depository Law; provided, further, that such investment shall be at all times made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

(e) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Federal Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses incurred for the administration of this act. Such money may be requisitioned and used for the payment of expenses incurred for the administration of this act pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and money is requisitioned after the enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor and provides that the amounts be limited by the following provisions:

(1) Such money may not be obligated after the close of the two (2) year period which began on the date of the enactment of the appropriation law; and

(2) The amount which may be obligated during any twelve (12)

month period beginning on July 1 and ending on the next June 30 does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Federal Social Security Act, as amended, during the same twelve (12) month period and the thirty-four (34) preceding twelve (12) month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any such thirty-five (35) twelve (12) month periods. For the purposes of this subsection, amounts used during any twelve (12) month period beginning on July 1 and ending on the next June 30 shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for the administration of this act during any such twelve (12) month period may be charged against any amount credited during such a twelve (12) month period earlier than the thirty-fourth preceding such period.

SECTION 4. That Section 72-1368, Idaho Code, be, and the same is hereby amended to read as follows:

72-1368. CLAIMS FOR BENEFITS AND APPELLATE PROCEDURE. (a) Claims for benefits shall be made in accordance with such rules as the director may prescribe.

(b) Each employer shall post and maintain in places readily accessible to individuals performing services for him printed statements concerning benefit rights, claims for benefits and such other matters relating to the administration of this act as the director may by rules prescribe. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the director may by rules prescribe. Such printed statements and other materials shall be supplied by the director to each covered employer without cost to the covered employer.

(c) A representative of the department of employment, appointed by the director and hereinafter referred to as a claims examiner, shall examine promptly a claim filed pursuant to subsection (a) ~~above~~ of this section and, on the basis of the facts found by him, shall determine whether or not the claimant is eligible for benefits and, if eligible, the date of commencement of his benefit year, the weekly benefit amount payable, the total benefit amount payable, his base period wages, and his base period covered employers. In the event of a denial or a finding by the claims examiner that a claimant is ineligible for benefits, the determination shall include the reasons for the ineligibility. At any time before the determination becomes final or a request for redetermination is received, the claims examiner, on his own motion, may withdraw the determination and issue a revised determination. The determination or revised determination shall become final unless, within fourteen (14) days after notice, as provided in subsection (e) ~~following~~ of this section, a request for redetermination is filed with the department of employment.

(d) A request for redetermination may be filed by any interested party and shall be filed in accordance with such rules as may be pre-

scribed by the director. A redetermination upon such request shall be promptly made by a claims examiner and, on the basis of facts found by him, shall include a statement as to whether or not the determination is affirmed, reversed or modified, and if modified, to what extent, as well as a statement showing the reasoning upon which the redetermination is based if adverse to the claimant requesting it; or, upon such request and before notices of the redetermination have been served, the director may, on his own motion, transfer the request for redetermination directly to an appeals examiner in which event such request shall be deemed to constitute an appeal, as of the date of the request, from the determination. A redetermination shall become final unless, within fourteen (14) days after notice, as provided in subsection (e) ~~following~~ of this section, an appeal is filed by an interested party with the department of employment in accordance with such rules as may be prescribed by the director. The director may make a special redetermination whenever he finds that a departmental error has occurred in connection with a determination, or that additional wages of the claimant or other facts pertinent to such determination have become available or have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentation of fact. Such special redetermination must be made within one (1) year from the date of the original determination, except that a special redetermination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosures or misrepresentations of fact may be made within two (2) years from the date of the original determination. Subject to the same limitations and for the same reasons, the director may make a special redetermination in any case in which the final decision has been rendered by an appeals examiner, the commission, or a court and may apply to the appeal tribunal which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a special redetermination is issued, such appeal, unless withdrawn, shall be treated as an appeal from such special redetermination.

(e) All interested parties as defined in section 72-1323, Idaho Code, shall be entitled to prompt service of notice of determinations and redeterminations. The claimant shall be served with notice of all determinations and redeterminations, but in the event that a claimant files more than one (1) claim arising out of the same unemployment, the last employer need not be served with notice of more than the initial determination and redetermination unless he specifically requests service of additional notices. For purposes of this section, a notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing.

(f) To hear and decide appeals from determinations and redeterminations the director shall appoint one or more appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination or redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the claims examiner for further action. The appeals examiner shall notify

the interested parties of his decision by serving notice in the same manner as provided in subsection (e) ~~above~~ of this section. Such decision shall set forth the findings of fact upon which the decision is based together with a statement showing how the appeals examiner applied the employment security law to such findings of fact in order to reach his conclusion. The appeals examiner may, either upon application for rehearing by an interested party or on his own motion, proceed to rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted in such case or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of such decision. A full and complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at any hearing before an appeals examiner shall be recorded ~~but need not be transcribed unless~~. If a claim for review of the appeals examiner's decision is filed with the commission, the testimony shall be transcribed if ordered by the commission. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed in the rules of the director. Such fees shall be deemed a part of the expenses of administering this act. If any interested party to a hearing formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file with the commission a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final.

(g) The commission shall decide all claims for review filed by any interested party in accordance with its own rules of procedure not in conflict herewith. The record before the commission shall consist of the record of proceedings before the appeals examiner, unless it appears to the commission that the interests of justice require that the interested parties be permitted to present additional evidence. In that event, the commission may, in its sole discretion, conduct a hearing to receive additional evidence or may refer the matter back to the appeals examiner for an additional hearing and decision. On the basis of the record of proceedings before the appeals examiner as well as any additional evidence, if allowed, the commission shall affirm, reverse, modify, set aside or revise the decision of the appeals examiner or may refer the matter back to the appeals examiner for further proceedings. The commission shall file its decision and shall promptly serve notice of its decision to all interested parties. A decision of the commission shall be final and conclusive as to all matters adjudicated by the commission upon filing the decision in the office of the commission; provided, within twenty (20) days from the date of filing the decision, any party may move for reconsideration of the decision or the commission may rehear or reconsider its decision on its own initiative, and in any such event the decision shall be final upon denial of a motion for rehearing or reconsideration or the filing of the decision on reconsideration.

(h) No person acting on behalf of the director or any member of the commission shall participate in any case in which he has a direct

or indirect personal interest.

(i) An appeal may be made to the Supreme Court by such parties from such decisions and orders of the commission and within such times and in such manner as prescribed by rule of the Supreme Court.

(j) (1) Benefits shall be paid promptly in accordance with a determination, redetermination, appeals examiner decision or commission findings allowing such benefit rights, regardless of:

(a) The pendency of a time period for requesting a redetermination, filing an appeal or petitioning for commission review, or

(b) Pendency of a request for determination, appeal, or petition for review.

(2) Such payments shall not be withheld until a subsequent redetermination, appeals examiner decision, or commission findings modifies or reverses the previous decision, in which event benefits shall be paid or denied in accordance with such decision.

(k) (1) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination, redetermination, decision of the appeals examiner or decision of the commission which has become final, shall be conclusive for all the purposes of this act as between the interested parties who had notice of such determination, redetermination or decision. Subject to appeal proceedings and judicial review by the Supreme Court as set forth in this section, any determination, redetermination or decision as to rights to benefits shall be conclusive for all purposes of this act and shall not be subject to collateral attack irrespective of notice.

(2) No finding of fact or conclusion of law contained in a decision or determination rendered pursuant to this act by an appeals examiner, the industrial commission, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding, except proceedings that are brought (i) pursuant to this act, (ii) to collect unemployment insurance contributions, (iii) to recover overpayments of unemployment insurance benefits, or (iv) to challenge the constitutionality of provisions of this act or administrative proceedings under this act.

(l) The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving claimants under the provisions of this act.

Approved March 22, 1993.

CHAPTER 120
(H.B. No. 93, As Amended)

AN ACT

RELATING TO THE CRIMINAL JUSTICE SYSTEM; AMENDING SECTION 5-230, IDAHO CODE, TO ELIMINATE PERSONS IMPRISONED ON A CRIMINAL CHARGE, AND THOSE IMPRISONED IN EXECUTION UNDER THE SENTENCE OF A CRIMINAL

COURT FOR A TERM LESS THAN LIFE FROM THE DEFINITION OF PERSONS UNDER DISABILITIES; AMENDING SECTION 18-310, IDAHO CODE, TO PROVIDE THAT A PERSON SENTENCED TO THE CUSTODY OF THE STATE BOARD OF CORRECTION FOR A TERM LESS THAN LIFE DOES NOT SUSPEND THE RIGHT TO SUE AND TO BE SUED BY THE PERSON SO SENTENCED AND TO PROVIDE APPLICATION TO ALL PERSONS SENTENCED TO THE CUSTODY OF THE STATE BOARD OF CORRECTION; AND REPEALING SECTION 18-311, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-230, Idaho Code, be, and the same is hereby amended to read as follows:

5-230. PERSONS UNDER DISABILITIES -- OTHER THAN FOR REAL PROPERTY. If a person entitled to bring an action, other than for the recovery of real property, be, at the time the cause of action accrued, either:

1. Under the age of majority; or
2. Insane.~~;~~ ~~or~~

~~3.--Imprisoned--on--a--criminal--charge,-or-in-execution-under-the sentence-of-a-criminal-court-for-a-term-less-than-for-life;-t~~The time of such disability is not a part of the time limited for the commencement of the action, provided however, that the time limited for the commencement of an action shall not be tolled for a period of more than six (6) years on account of minority, incompetency, a defendant's absence from the jurisdiction, any legal disability or for other cause or reason except as specifically provided in section 5-213, Idaho Code.

SECTION 2. That Section 18-310, Idaho Code, be, and the same is hereby amended to read as follows:

18-310. IMPRISONMENT -- EFFECT ON CIVIL RIGHTS AND OFFICES. (1) A sentence of custody to the Idaho state board of correction ~~for any time less than for life~~ suspends all the civil rights of the person so sentenced including the right to refuse treatment authorized by the sentencing court, and forfeits all public offices and all private trusts, authority or power during such imprisonment: provided that any such person may bring an action for damages or other relief in the courts of this state or have an action brought against such person; and provided further that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation, except the right to ship, transport, possess or receive a firearm, and the right to refuse treatment authorized by the sentencing court.

(2) Upon the final discharge of a person convicted of any Idaho felony except treason and those enumerated in paragraph (a) of this subsection with regard to the right to ship, transport, possess or receive a firearm, a person shall be restored the full rights of citizenship. As used in this subsection, "final discharge" means satisfactory completion of imprisonment, probation and parole as the case may be.

(a) Any person convicted of aggravated assault (18-905, Idaho

Code), aggravated battery (18-907, Idaho Code), assault with intent to commit a serious felony (18-909, Idaho Code), battery with intent to commit a serious felony (18-911, Idaho Code), burglary (18-1401, Idaho Code), lewd conduct with a minor or child under sixteen (18-1508(3), (4), (5) and (6), Idaho Code), sexual abuse of a child under sixteen (18-1506, Idaho Code), felonious rescuing prisoners (18-2501, Idaho Code), escape by one charged with, convicted of or on probation for a felony (18-2505, Idaho Code), degrees of murder (18-4003, Idaho Code), voluntary manslaughter (18-4006(1), Idaho Code), assault with intent to murder (18-4015, Idaho Code), administering poison with intent to kill (18-4014, Idaho Code), kidnapping (18-4501, Idaho Code), mayhem (18-5001, Idaho Code), rape (18-6101, Idaho Code), male rape (18-6108, Idaho Code), robbery (18-6501, Idaho Code), ritualized abuse of a child (18-1506A, Idaho Code), cannibalism (18-5003, Idaho Code), felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit substance (37-2732, Idaho Code), or any person convicted of an attempt (18-306, Idaho Code), conspiracy (18-1701, Idaho Code), or solicitation (18-2001, Idaho Code), to commit any of the crimes described in subsection (2)(a) of this section.

(b) The provisions of this subsection shall apply only to those persons convicted of the enumerated felonies in paragraph (a) of this subsection on or after July 1, 1991.

(3) A person not restored to the civil right to ship, transport, possess or receive a firearm may make application to the commission of pardons and parole to restore the civil right to ship, transport, possess or receive a firearm. The commission shall not accept any such application until five (5) years after the date of final discharge. The commission shall conduct the proceeding upon such application pursuant to the rules and regulations adopted in accordance with the law. The commission shall not restore the right to ship, transport, possess or receive a firearm to any person convicted of murder in the first degree (18-4003, Idaho Code), murder in the second degree (18-4003, Idaho Code), or any felony enumerated in paragraph (a) of this subsection, upon which the sentence was enhanced for the use of a firearm during the commission of said felony.

SECTION 3. That Section 18-311, Idaho Code, be, and the same is hereby repealed.

Approved March 22, 1993.

CHAPTER 121
(H.B. No. 139)

AN ACT

RELATING TO SCHOOL AGE; AMENDING SECTION 33-201, IDAHO CODE, TO REDEFINE "SCHOOL AGE" AND TO EXPAND THE DEFINITION OF SCHOOL AGE FOR CHILDREN WITH DISABILITIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-201, Idaho Code, be, and the same is hereby amended to read as follows:

33-201. SCHOOL AGE. The services of the public schools of this state are extended to any acceptable person of school age. "School age" is defined as including all persons resident of the state, between the ages of five (5) and twenty-one (21) years. For the purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs~~:~~ on or before the ~~beginning of--the-sixteenth~~ first day of September ~~for~~ of the school year ~~beginning-in-1990;-and-before-the-beginning-of-the-sixteenth-day-of--August for-any-school-year-thereafter~~ in which the child is to enroll in kindergarten. For a child enrolling in the first grade, the age of six (6) years must be reached on or before the first day of September of the school year in which the child is to enroll. ~~For-a-resident-child who-does-not-attend-a-kindergarten,-"school-age"-shall-be-the--age--of six-(6)-if-this-age-has-been-reached;-before-the-beginning-of-the-sixteenth--day--of--October-for-the-school-year-beginning-in-1990;-before the-sixteenth-day-of-September-for-the-school-year-beginning-in--1991; and--before--the-sixteenth-day-of-August-for-each-school-year-thereafter.~~

For resident ~~exceptional~~ children ~~who-are-physically--handicapped, developmentally--delayed,--mentally--retarded,--emotionally-disturbed, chronically-ill-or-who-have-visual-or-auditory--handicaps,--or--speech impairments~~ with disabilities who qualify for special education and related services under public law 94-142 and subsequent amendments thereto, and applicable state and federal regulations, "school age" shall begin at the attainment of age three (3) ~~for--the--school--year beginning--in--1989-and-for-each-school-year-thereafter~~ and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

Approved March 22, 1993.

CHAPTER 122
(H.B. No. 150)

AN ACT

RELATING TO BRAND INSPECTION FEES; AMENDING SECTION 25-1160, IDAHO CODE, TO INCREASE THE MAXIMUM FEES WHICH SHALL BE CHARGED FOR BRAND INSPECTION SERVICES AT LIVESTOCK AUCTION SALES WHICH ARE NOT SCHEDULED LIVESTOCK AUCTION SALES AND TO PROVIDE MINIMUM FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-1160, Idaho Code, be, and the same is hereby amended to read as follows:

25-1160. BRAND INSPECTION FEES. (1) The maximum fee which shall

be charged by the state brand inspector and his deputies for brand inspection shall be:

(a) ~~Seventy-five cents~~ One dollar (~~75¢~~ $1.00) for each head of cattle;

(b) One dollar and fifty cents ($1.50) for each head of horses, mules and asses.

(2) A minimum fee of three dollars ($3.00) shall be charged by the state brand inspector and his deputies for each brand inspection certificate issued, whether for cattle, horses, mules or asses, or a combination thereof. The minimum brand inspection fee shall apply only in those cases when a brand inspector must travel over one (1) mile from his assigned duty post.

(3) The minimum fee for brand inspection services at any normally scheduled livestock auction sale is fifty dollars ($50.00) per day, and shall be paid by the livestock auction sale, whether or not the inspection fees received from the owners of livestock inspected equals the minimum fee. If the fees paid by the owners of livestock inspected at the sale exceed the minimum fee, the actual amount of fees collected shall be paid, rather than the minimum amount.

(4) The fee for brand inspection services at any livestock auction sale which is not a normally scheduled livestock auction sale shall be:

(a) Eighteen dollars ($18.00) per hour for each hour that each brand inspector spends engaged in the performance of brand inspection services at the livestock auction sale;

(b) Twenty-six cents (26¢) per mile per vehicle for each mile that said brand inspector(s) must travel to and from the sale from his assigned duty post.

The minimum fee, not including mileage, shall be the actual hours worked, or thirty-six dollars ($36.00) per day, or the inspection fees as set forth in subsection (1) of this section, whichever is greater.

(5) The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees. All such fees shall be paid by the owner of the cattle, horses, mules and asses and credited to the state brand account.

(~~5~~6) All brand inspection fees, and all other fees required by law to be collected by the brand inspector, are due and payable at the time of inspection, but the brand board may, by rules and regulations, allow all of such fees to be paid on a schedule that requires payment at least monthly, after receiving a request for such delayed payment schedule and after such request is approved by the state brand inspector. The brand board may require a security deposit to insure the prompt payment of all fees owed to the state. Failure to pay as required shall be cause for the brand inspector to file an action in the district court of the county wherein the inspection was made for the amount of all fees owed, plus all costs and reasonable attorney fees associated with the action plus interest at the rate specified in section 28-22-104, Idaho Code, on the amount owed from the due date.

Approved March 22, 1993.

CHAPTER 123
(H.B. No. 156)

AN ACT

RELATING TO SIZE OF VEHICLES AND LOADS; AMENDING SECTION 49-1010, IDAHO CODE, TO SPECIFY DIMENSIONS OF SEMITRAILERS AND DOUBLE TRAILERS WHICH MAY OPERATE ON DESIGNATED PORTIONS OF THE STATE HIGHWAY SYSTEM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1010, Idaho Code, be, and the same is hereby amended to read as follows:

49-1010. SIZE OF VEHICLES AND LOADS. No vehicle shall exceed the dimensions specified below, except that certain devices determined by the board as necessary for the safe and efficient operation of motor vehicles, including energy conservation devices, shall be excluded from the calculation of width or length.

(1) The width of a vehicle, including any load thereon, except as noted below, shall not exceed ..... 8 1/2 feet.

(a) The limitations as to size of vehicles stated in this section shall not apply to farm tractors or to implements of husbandry, including any load thereon, and including all equipment used in land leveling operations, when being incidentally operated upon the highway from one (1) farm operation to another during daylight hours.

(b) Notwithstanding the exemption from width limitation for farm tractors included in paragraph (a) of this subsection, the total outside width of any farm tractor being transported on the interstate system in this state, except as permitted by section 49-1004, Idaho Code, shall not exceed ..... 9 feet.

(c) A farm tractor or implement of husbandry, when being incidentally transported upon the highway with a width in excess of the limits of paragraphs (a) and (b) of this subsection, must not proceed at a speed in excess of twenty-five (25) miles per hour, must display one (1) eighteen (18) by eighteen (18) inch red flag on the outermost left projection of the tractor or implement being transported, except that the speed restriction of twenty-five (25) miles per hour shall not apply when such tractor or implement of husbandry is being hauled on legal width highway vehicles equipped as required by law.

(2) The height of a vehicle, including the load thereon, shall not exceed..... 14 feet.

(3) The length of a vehicle, or vehicle combination, except as noted below shall not exceed:

(a) When a single motor vehicle ..... 45 feet.

(b) When a trailer or semitrailer, except as noted below ..... 48 feet.

1. Semitrailers operating on routes determined by the board to have severe curvature, deficient width and/or heavy traffic conditions shall be limited to an overall combination

length not to exceed ..... 65 feet.

2. The length of a trailer tongue, or the length of the tongue of a converter gear used to convert a semitrailer to a trailer, shall be excluded from the calculation of a trailer length.

3. Semitrailers operating on routes which are a part of the national network as set forth in the Code of Federal Regulations, Title 23, Part 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network shall not exceed a length of ..... 53 feet.

(c) When a motor vehicle and one or more trailers, except as noted in (3)(b) and (3)(d) ..... 75 feet.

(d) When a combination of semitrailer and trailer, or of two (2) semitrailers the length in such combination, including the connecting tongue and excluding the truck tractor except as noted below ..... 61 feet.

When the combination of semitrailer and trailer or of two (2) semitrailers including the connecting tongues exceeds sixty-one (61) feet, the length of such combination including the truck tractor ..... 75 feet.

(e) When a combination of a semitrailer and trailer, or of two (2) semitrailers operating on routes on the national network as set forth in the Code of Federal Regulations, Title 23, Part 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network, the length, including the connecting tongue and excluding the truck tractor, shall not exceed ..... 68 feet.

(f) When a dromedary tractor with semitrailer, stinger-steered by having the kingpin located five (5) feet to the rear of the centroid of the rear axle(s) ..... 75 feet.

(~~f~~g) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in (e) above ..... 65 feet.

(~~g~~h) When an auto transporter or boat transporter, stinger-steered as defined in (e) above, excluding front and rear overhang of load ..... 75 feet.

(~~h~~i) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in (e) above, excluding front and rear overhang of load ..... 65 feet.

(~~i~~j) When a tractor with stinger-steered pole trailer or log dolly, connected by a reach or pole, or a combination used for transporting long loads such as poles, pipes, logs or structural members generally capable of sustaining themselves as beams between supporting bunks or connections ..... 75 feet.

(4) The overhang or extension of a load shall not extend:

(a) Beyond the front of a vehicle, more than ..... 4 feet.

(b) Beyond the last axle, more than ..... 15 feet.

(c) Beyond the left fender of a passenger vehicle, more than ..... 0 feet.

(d) Beyond the right fender of a passenger vehicle, more than ..... 6 inches.

(e) To the front and rear combined of an auto transporter or boat transporter, more than ..... 7 feet.

(5) Noncargo-carrying devices necessary for the safe and efficient operation of the vehicle, as determined by the board, shall not be included in measurement for length.

(6) No combination shall include more than three (3) units except when a saddlemount combination ..... 75 feet.

(7) Vehicle combinations consisting of not more than four (4) vehicle units may be operated by permit, with an overall length in excess of the limits of subsection (3) of this section, on routes designated for such operations by the board with an overall combination length not to exceed one hundred and five (105) feet.

Approved March 22, 1993.

CHAPTER 124
(H.B. No. 227)

AN ACT

RELATING TO INSURANCE LICENSE FEES AND THE TAX ON INSURANCE PREMIUMS; AMENDING SECTION 41-401, IDAHO CODE, TO DELETE THE LIMITATION ON THE DIRECTOR'S ABILITY TO INCREASE RENEWAL FEES BY NO LARGER A PERCENTAGE THAN THE PERCENTAGE INCREASE IN THE GENERAL ACCOUNT REVENUE, AND TO PROVIDE THAT THE BALANCE IN THE INSURANCE ADMINISTRATIVE ACCOUNT SHALL NOT BE CONSIDERED EXCESSIVE UNTIL A TRANSFER TO THE GENERAL ACCOUNT IS REQUIRED; IMPOSING A SURCHARGE ASSESSMENT UPON INSURERS REQUIRED TO PAY PREMIUM TAXES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-401, Idaho Code, be, and the same is hereby amended to read as follows:

41-401. FEES -- LICENSES -- MISCELLANEOUS CHARGES. (1) The director shall collect in advance, and persons so served shall pay to the director in advance, fees, licenses, and miscellaneous charges as provided for from time to time by regulation promulgated by the director. The director may adjust fees, licenses and miscellaneous charges as necessary to allow the department to meet the appropriation as provided for by law.

(2) Any regulation setting fees, licenses and miscellaneous charges shall adhere to the Idaho administrative procedure act except that the effective date of such regulation shall be July 1 of the calendar year of enactment or change. If the appropriation is not known or set by April 1, the director shall be authorized to use emergency rulemaking procedures to maintain an effective date of July 1.

(3) ~~In--addition-to-the-other-limits-imposed-by-this-section,-the director-shall-not,-in-any-one-(1)-calendar-year,-increase-any-renewal fee-by-a-larger-percentage-than-the-percentage-increase-in-the-general account-revenue-of-the-state-of-Idaho-for-the-same-period-of-time;~

~~(4)~~ Insurance Administrative Account:

(a) There is hereby created an account in the dedicated fund in the state treasury, to be designated the "Insurance Administrative Account" to provide for the expenses of the department of insurance as provided for by law.

(b) The insurance administrative account shall be effective December 31, 1984, and be in existence for a period of at least six (6) months prior to the dedicated account appropriation becoming effective and shall consist of the following:

1. All moneys appropriated by the legislature.

2. All fees, licenses and miscellaneous charges collected pursuant to this section.

(c) All moneys placed in the account shall be examined, audited and allowed in the manner now or hereafter provided by law.

(d) Pending use for purposes of the provisions of the laws of this state, moneys in the insurance administrative account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury.

(e) At the beginning of each fiscal year, those moneys in the insurance administrative account which exceed the current year's appropriation plus any residual encumbrances made against prior years' appropriations by twenty-five percent (25%) or more shall be transferred to the general account. The balance in this account shall not be considered excessive until such a transfer is required pursuant to the provisions of this subsection.

SECTION 2. There is hereby imposed a one-time only surcharge assessment upon all insurers required to pay premium taxes pursuant to sections 41-401 and 41-402, Idaho Code. Such assessment shall be in an amount equal to three percent (3%) of the tax due for the calendar year 1993. Every insurer shall make a prepayment of the estimated surcharge assessment based upon the preceding calendar year's business and the current year's rate, and shall pay such amount to the director for deposit in the insurance administrative account on or before June 15, 1993. On or before March 1, 1994, any balance of surcharge assessment due shall be paid to the director. Any overpayment of surcharge assessment shall be refunded pursuant to the provisions of section 41-402A, Idaho Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 1993.

CHAPTER 125
(H.B. No. 233)

AN ACT

RELATING TO HOTELS; AMENDING SECTION 39-1805, IDAHO CODE, TO CLARIFY A

HOTELKEEPER'S RIGHT TO EVICT GUESTS IN CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 18, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1809, IDAHO CODE, TO CLARIFY A HOTELKEEPER'S DUTY TO PROVIDE ACCOMMODATIONS; AMENDING CHAPTER 18, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1810, IDAHO CODE, TO CLARIFY A HOTELKEEPER'S LIQUOR LICENSE LIABILITY FOR CONSUMPTION OF ALCOHOL AT A HOTEL; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1805, Idaho Code, be, and the same is hereby amended to read as follows:

39-1805. EVICTION ~~FOR--NONPAYMENT~~ OF GUESTS. (1) A hotelkeeper shall have the right to evict a guest who has failed to pay his hotel bill when due. Before such eviction may occur, demand for payment of the bill must be made and the guest must be requested to leave if the bill is not paid. If the guest fails to pay the bill after such demand, the hotelkeeper may evict such guest by locking the door to his room, removing said guest's baggage and other personal property, or by any other peaceful means. The hotel shall have the right to hold said baggage and other propert~~ies~~y as hereinafter provided.

(2) A hotelkeeper also shall have the right to evict a person, whether or not such person is guest of the hotel, who:

(a) Is under the influence of alcohol, drugs or any other intoxicating substances;

(b) Is disorderly so as to disturb the peace of other guests;

(c) Seeks to use the hotel for any unlawful purpose;

(d) Seeks to bring property into the hotel which may be dangerous to other persons (such as firearms, explosives or hazardous or toxic substances) or the possession of which by such person is unlawful;

(e) Destroys, damages or defaces property of the hotel or its guests or threatens to do so;

(f) Would cause or permit any hotel room to exceed its maximum allowable occupancy as established by the hotelkeeper; or

(g) Refuses to abide by reasonable standards or policies established by the hotelkeeper for operation and management of the hotel.

SECTION 2. That Chapter 18, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1809, Idaho Code, and to read as follows:

39-1809. HOTELKEEPER'S RESPONSIBILITY TO PROVIDE ACCOMMODATIONS. A hotelkeeper shall not be required to provide accommodations, facilities or privileges of a hotel to any person who:

(1) Is unwilling or unable to pay for the accommodations and services of the hotel. A hotelkeeper may require a prospective guest to demonstrate the ability to pay for the accommodations and services, including a damage deposit in a reasonable amount, by cash or acceptable credit card;

(2) The hotelkeeper reasonably believes to be under the influence of alcohol, drugs or any other intoxicating substances or who is disorderly so as to disturb the peace of other guests;

(3) The hotelkeeper reasonably believes seeks to use the hotel for any unlawful purpose;

(4) The hotelkeeper reasonably believes seeks to bring property into the hotel which may be dangerous to other persons (such as firearms, explosives or hazardous or toxic substances) or the possession of which by such person is unlawful;

(5) Destroys, damages or defaces property of the hotel or its guests or threatens to do so;

(6) Is under eighteen (18) years of age and unaccompanied by his parent or guardian. A hotelkeeper may condition the provision of accommodations, facilities or privileges of a hotel to persons under the age of eighteen (18) years by requiring the parent or guardian to:

(a) Agree in writing to accept liability for the costs of the accommodations, including the cost of the room, taxes, other charges and any damages to the hotel caused by such person or his invitees; and

(b) To provide an acceptable credit card or cash deposit sufficient to cover such costs;

(7) Would cause or permit any hotel room to exceed its maximum allowable occupancy as established by the hotelkeeper; or

(8) Refuses to abide by reasonable standards or policies established by the hotelkeeper for operation and management of the hotel.

SECTION 3. That Chapter 18, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1810, Idaho Code, and to read as follows:

39-1810. CONSUMPTION OR POSSESSION OF ALCOHOL AT HOTELS. (1) A license or permit properly issued to a person to serve beer, wine or liquor by the drink, which license or permit is used at or in a hotel, may not be suspended, revoked or not be renewed, nor may conditions be placed upon it, by reason of the fact that individuals at or in the hotel, whether or not they are guests, possess or consume beer, wine or liquor without being of a legal age to do so or at a time when such consumption is not legal if:

(a) (i) The alcohol was not sold, provided or delivered to the persons who are not of legal age by the licensee or its agents or employees; or

(ii) The alcohol was not sold, provided or delivered by the licensee or its agents or employees at a time when it was legally prohibited from doing so;

(b) The licensee, the hotelkeeper and their agents and employees took reasonable precautions to prevent:

(i) Persons who are not of legal age from possessing or consuming alcohol at or in the hotel; or

(ii) Possession or consumption of alcohol at or in the hotel at a time when such possession or consumption is not legal; and

(c) The possession or consumption is not on that portion of the

premises which the hotelkeeper has identified as the bar or restaurant or in a meeting room, ballroom or the like in which beer, wine or liquor then is being sold by the licensee.

(2) A license or permit properly issued to a person to serve beer, wine or liquor by the drink, which license or permit is used at or in a hotel, may not be suspended, revoked or not be renewed, nor may conditions be placed upon it, by reason of the fact that hotel guests possess or consume beer, wine or liquor in their sleeping rooms and serve it there to their invitees who are not of legal age or at a time during which it would not be legal for the licensee to sell or permit the possession or consumption of alcohol on the premises.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 1993.

CHAPTER 126
(H.B. No. 285)

AN ACT

RELATING TO THE HIGHWAY DISTRIBUTION ACCOUNT; AMENDING SECTION 40-709, IDAHO CODE, TO PROVIDE THAT APPORTIONMENTS OF FUNDS TO COUNTIES WITH HIGHWAY DISTRICTS SHALL BE MADE DIRECTLY TO COUNTIES WHICH MAINTAIN HIGHWAYS AND TO HIGHWAY DISTRICTS ACCORDING TO THE FORMULA PROVIDED; AMENDING SECTION 40-715, IDAHO CODE, TO SPECIFY THE METHOD OF TRANSFERRING FUNDS TO COUNTIES, HIGHWAY DISTRICTS AND CITIES; AND REPEALING SECTION 40-710, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-709, Idaho Code, be, and the same is hereby amended to read as follows:

40-709. APPORTIONMENT OF FUNDS FROM HIGHWAY DISTRIBUTION ACCOUNT TO LOCAL UNITS OF GOVERNMENT. From the moneys appropriated from the highway distribution account to local units of government, the appropriation shall be distributed as follows:

(1) Thirty per cent (30%) shall be apportioned among incorporated and specially chartered cities, in the same proportion as the population of the incorporated or specially chartered city bears to the total population of all the incorporated or specially chartered cities as shown by the last regular or special federal census.

(2) The remainder shall be apportioned:

(a) Ten per cent (10%) shall be divided equally among all counties of the state.

(b) Forty-five per cent (45%) shall be divided among the counties of the state in the proportion that the amount collected from motor vehicle registrations in each county during the last calendar year bears to the total amount of those collections in all

counties in the state.

(c) Forty-five per cent (45%) shall be divided among the counties of the state in the proportion that the number of miles of improved highways in the county highway system of each county bears to the total number of miles of improved highways in the county highway systems of all counties in the state. The director is directed to certify to the state auditor, on or before January 1 of each year, the number of miles of improved highways in each county.

(3) Moneys paid to counties with highway districts shall be further distributed by the state as follows:

(a) Ten per cent (10%) shall be divided equally among the county, if the county maintains any highways, and the highway districts;

(b) Forty-five per cent (45%) shall be divided among the county, if the county maintains any highways, and the highway districts of the county in the proportion that the amount collected from motor vehicle registrations in each area designated during the last calendar year bears to the total amount of those collections in the entire county;

(c) Forty-five per cent (45%) shall be divided among the county, if the county maintains any highways, and the highway districts in the proportion that the number of miles of improved highways in the county and the highway districts bear to the total number of miles of improved highways in the entire county highway system.

(4) The state auditor shall ascertain the sums set for the apportionment and remit to the local governments their share of the amount computed. The apportionment hereby made shall be remitted to the local governments not later than January 25, April 25, July 25, and October 25 of each year.

(~~4~~5) Moneys paid to incorporated or specially chartered cities shall be expended by the governing bodies of those cities solely in the construction and maintenance of highways within their corporate limits.

~~(5)--Moneys-paid-to-the-counties-shall-be-placed-by-each-county-in a-fund-to-be-known-as-the-county-highway-fund--and--the--county--shall apportion--those-funds-as-follows:-To-the-interest-and-sinking-fund-of the-county-an-amount-as-may-be-necessary--to--meet--the--interest--and sinking--fund--requirements--for--the-current-year-on-any-unpaid-bonds issued-by-the-county-for-highway-and--bridge--purposes;--or--refunding bonds-issued-to-take-up-those-bonds.-The-county-shall-pay-over-to-each highway--district--within-the-county-the-portion-of-the-balance-of-the county-highway-fund-as-the-following-apportion-shall-apply:~~

~~(a)--Ten-per-cent-(10%)-shall-be-divided-equally-among-the-county, if-the-county-maintains-any-highways-and-the-highway-districts;~~

~~(b)--Forty-five-per-cent-(45%)-shall-be-divided-among-the--county, if-the-county-maintains-any-highways;-and-the-highway-districts-of the--county-in-the-proportion-that-the-amount-collected-from-motor vehicle-registrations-in-each-area-designated-during-the-last-calendar-year-bears-to-the-total-amount-of-those-collections--in--the entire-county;~~

~~(c)--Forty-five--per-cent-(45%)-shall-be-divided-among-the-county, if-the-county-maintains-any-highways;-and-the-highway-districts-in the-proportion-that-the-number-of-miles-of--improved--highways--in~~

~~the-county-and-highway-districts-bear-to-the-total-number-of-miles of--improved--highways--in--the--entire-county-highway-system.-The county-shall-also-apportion-as-and-when--needed--for--disbursement for-current-expenses-for-the-construction-and-maintenance-of-highways-any-further-balance-of-the-county-highway-fund-to-the-highway and--bridge--fund-of-the-county,-and-may-expend-all-or-any-portion of-the-highways-and-bridge-fund-in-the--construction--and--maintenance-of-state-highways-within-the-county.~~

(6) Each highway district receiving an apportionment from the ~~county~~ highway ~~fund~~ distribution account shall apportion those funds as follows: To the interest and sinking fund of the district, an amount as may be necessary to meet the interest and sinking fund requirements for that year on any unpaid bonds issued by that district, and any balance of those funds shall be used for highway and bridge maintenance and construction. Each district may expend all or any portion of the balance of those funds in the construction and maintenance of state highways within the district.

(7) No part of ~~the-county~~ highway funds or any apportionment from it shall ever be used for any purposes other than those provided in this section, except as specifically otherwise provided~~,-and--if,--at.~~ At the end of any fiscal year ~~there-shall-remain~~ an unexpended balance of ~~those~~ highway funds ~~in-the-hands-of-the-treasurer-of-any-highway district,-that-balance~~ shall be carried forward and retained and subsequently applied to the maintenance and construction of highways or the payment of bond interest and principal and sinking fund requirements.

SECTION 2. That Section 40-715, Idaho Code, be, and the same is hereby amended to read as follows:

40-715. TRANSFER OF SUMS ALLOCABLE TO COUNTIES, HIGHWAY DISTRICTS AND CITIES -- DISBURSEMENT. It is the duty of the state auditor to draw drafts upon the state treasury for the transfer of the distributive sums allocable to the several counties, highway districts and cities, which drafts shall be made payable directly to the county treasurers, highway district secretary or city clerk. The county treasurers shall deposit the moneys in the county highway fund, highway district secretaries shall deposit the moneys in the highway district road fund and the city clerk shall deposit the moneys in the city street fund. ~~The-county-treasurers-shall-pay-out-those-moneys,-under the-direction-of-the-commissioners,-as--provided--by--section--40-709, Idaho-Code.~~

SECTION 3. That Section 40-710, Idaho Code, be, and the same is hereby repealed.

Approved March 22, 1993.

CHAPTER 127
(H.B. No. 286)

AN ACT

RELATING TO COUNTY AND HIGHWAY DISTRICT HIGHWAY SYSTEMS; AMENDING SECTION 40-607, IDAHO CODE, ADDING HIGHWAY DISTRICT'S RESPONSIBILITY IN HIGHWAY CONSTRUCTION AND CHANGING TERMINOLOGY TO COMPLY WITH FEDERAL STATUTE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-607, Idaho Code, be, and the same is hereby amended to read as follows:

40-607. COUNTY AND HIGHWAY DISTRICT HIGHWAY SYSTEM CONSTRUCTION, MAINTENANCE AND RIGHT-OF-WAY COSTS BORNE BY THE RESPONSIBLE COUNTY OR HIGHWAY DISTRICT -- EXCEPTIONS. The costs of constructing, reconstructing, maintaining and acquiring rights-of-way for highways in a county highway system and a highway district highway system shall be borne by the ~~county~~ responsible highway jurisdiction. This section shall not be construed as preventing counties and highway districts from contracting with the state for engineering or other services provided just compensation is paid. If planning or engineering studies show the existence of a need, a county or highway district may purchase, condemn or otherwise acquire ~~a~~ new or additional rights-of-way for a new alignment of or improvement of an existing alignment of an ~~federal-aid-secondary-route~~ extension of ~~an-existing~~ county or highway district rural major collector highway ~~built-with--federal--assistance~~ through cities ~~if~~ with populations of less than five thousand (5,000), provided the extension does not eliminate access to adjacent property owners. A county or highway district shall have jurisdiction, with the full authority to construct, maintain and control, over an ~~federal-aid secondary-route~~ extension of a rural major collector highway eligible for federal highway funds within a city ~~and~~, when the city population is less than five thousand (5,000). Counties and highway districts may enter into any mutual agreement for the transfer of maintenance and control of the rural major collector highway extension to the city. A county or highway district may contract with an adjoining county or highway district for the construction and/or maintenance of any part of its highway system.

Approved March 22, 1993.

CHAPTER 128
(S.B. No. 1070)

AN ACT

RELATING TO FIRE SAFETY; AMENDING SECTION 54-2604, IDAHO CODE, TO PROVIDE THAT A PLUMBING SYSTEM DOES NOT INCLUDE A SINGLE SERVICE INTEGRATED FIRE SPRINKLER SYSTEM; AND AMENDING SECTION 41-254,

IDAHO CODE, TO PROVIDE THAT THE STATE FIRE MARSHAL HAS EXCLUSIVE JURISDICTION OVER SINGLE SERVICE INTEGRATED FIRE SPRINKLER SYSTEMS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2604, Idaho Code, be, and the same is hereby amended to read as follows:

54-2604. PLUMBING SYSTEMS. (1) A plumbing system, public or private, means and includes:

(a) plumbing fixtures, interconnecting system pipes and traps;

(b) soil, waste and vent pipes;

(c) building drains and building sewers;

(d) sanitary and storm water drainage facilities;

(e) liquid waste and sewerage facilities;

(f) water supply systems and distribution and disposal pipes of any premises;

(g) water treating and water using equipment attached to a plumbing system except for water conditioning equipment; and

(h) all the respective connections, devices and appurtenances of any plumbing system, public or private, within or adjacent to any building, residence, manufactured housing, or structure to and including a connection with any point of a public or private supply, distribution or disposal system or other acceptable terminal.

(2) As used in this section, "water conditioning equipment" shall mean those devices necessary to remove impurities and sediment from water.

(3) A plumbing system does not include a single service integrated fire sprinkler system as defined in section 41-254, Idaho Code.

(4) It shall be unlawful for any person, firm, copartnership, association or corporation to do, or cause to be done, whether acting as a principal, agent, or employee, any construction, installation, improvement, extension or alteration of any plumbing system or water conditioning equipment in any residence, building, or structure, or service lines thereto, in the state of Idaho, without complying with the bonding provisions as provided by section 54-2602, Idaho Code.

SECTION 2. That Section 41-254, Idaho Code, be, and the same is hereby amended to read as follows:

41-254. POWERS AND DUTIES OF STATE FIRE MARSHAL -- UNIFORM FIRE CODE, ENFORCEMENT AND REGULATIONS -- REPORTS. The state fire marshal shall be appointed by the director of the department of insurance, with the approval of the governor and shall serve at the pleasure of the director. The state fire marshal shall have the following powers and duties:

1. To enforce the uniform fire code.

2. To prescribe regulations in addition to the uniform fire code as adopted, which may be deemed necessary for the prevention of fires and protection of life and property, and such regulations are to be enforced by the state fire marshal.

3. To make interpretations and rules of the intent of the various

provisions of the uniform fire code as adopted.

4. To adopt, rescind, modify or amend rules and regulations for the exercise of functional powers and duties.

5. To transmit to the governor and legislature, on or before the 15th day of February of every year, a full report of proceedings under this act and such statistics as he may wish to include therein unless some other time for reporting is fixed by law, and such report shall be available to the public.

6. To make recommendations for amendments to the uniform fire code to be submitted to the promulgating authority for its consideration.

7. To have exclusive jurisdiction over single service integrated fire sprinkler systems. A "single service integrated fire sprinkler system" is defined as an integrated system of underground and overhead piping, valves and sprinklers used exclusively for fire protection purposes and designed in accordance with fire protection engineering standards, including the uniform fire code, beginning with the first connection to a public water system regardless of the existence or location of a back flow prevention device.

8. No person shall be eligible to serve as state fire marshal unless he:

(a) Has had at least twelve (12) years' full-time paid experience with a state, city or county fire protection agency whose primary function is fire prevention and structural fire safety, including at least five (5) years' experience in an administrative capacity as the chief agency officer; or

(b) Holds a four (4) year college degree in one of the physical sciences and has had at least five (5) years' full-time experience in fire protection and structural fire safety with a fire protection agency; or

(c) Is a member of the American society of fire protection engineers.

Approved March 23, 1993.

CHAPTER 129
(S.B. No. 1130)

AN ACT

RELATING TO COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE; AMENDING SECTION 36-601, IDAHO CODE, TO REQUIRE PERSONS BUYING CERTAIN RAW HIDES, SKINS OR PELTS TO OBTAIN A FUR BUYER'S OR TAXIDERMIST'S LICENSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-601, Idaho Code, be, and the same is hereby amended to read as follows:

36-601. TAXIDERMIST AND FUR BUYERS MUST PROCURE LICENSE. (a) Taxidermy -- License Required. Any person who at any time within the

state of Idaho desires to mount, preserve or prepare for preservation any of the dead bodies of any wildlife or any part thereof not personally taken by him in compliance with the provisions of this title, must obtain a taxidermist license. Without paying an additional fee for a fur buyer's license, the holder of a taxidermist's license shall be entitled to engage in purchases as provided in subsection (b) of this section.

(b) Purchase of Hides, Skins or Pelts -- License Required. Any person who engages in the business of buying raw black bear skins, raw cougar skins or parts of black bears or cougars, or the raw hides, skins, or pelts of any of the fur bearers of this state must obtain a fur buyer's license.

(c) Said taxidermist and fur buyer licenses shall be obtained from the director for a fee and subject to the limitations hereinafter provided.

Approved March 23, 1993.

CHAPTER 130
(S.B. No. 1132)

AN ACT

RELATING TO THE LEVY OF ASSESSMENT ON THE SCALE OF ALL FOREST PRODUCTS HARVESTED WITHIN THE STATE OF IDAHO; AMENDING SECTION 38-1209, IDAHO CODE, TO INCREASE THE MAXIMUM SCALING ASSESSMENT TO TWENTY CENTS PER THOUSAND BOARD FEET OR TWELVE CENTS PER CUNIT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 38-1209, Idaho Code, be, and the same is hereby amended to read as follows:

38-1209. LEVY OF ASSESSMENT -- BUDGET -- HEARING -- FUNDS -- BOND OF SECRETARY -- SALARY. (a) The board is hereby authorized and directed to levy an assessment on the scale of all forest products harvested within the state of Idaho in an amount not to exceed ~~thirteen~~ twenty cents (~~13~~20¢) per thousand (1,000) board feet or ~~seven and eight-tenths~~ twelve cents (~~7.8~~12¢) per cunit, provided that no such assessment shall be levied more than once on any forest product. The board shall set times and places for its meetings and shall hold not less than four (4) meetings in each calendar year. The board shall designate a meeting date on which a budget shall be adopted and assessment shall be levied. Notice of such meeting shall be given thirty (30) days prior thereto in a newspaper of general circulation throughout the state. The board shall designate and levy an assessment as herein provided to raise moneys necessary to fund operations of the board and the state scaling program established by this chapter based upon the budget adopted and notice of such levy shall be given in the notice of the budget. The budget and assessment shall become effective upon adoption by the board. In the event a written request is made therefor by any interested person within thirty (30) days after notice

of the budget and assessment has been published, the board shall set a time and place for a hearing at which any person may submit recommendations for changes in the budget and the assessment. Thereafter the board shall either confirm or modify the budget and assessment and cause notice of such action to be published in a newspaper of general circulation throughout the state within ten (10) days after such action. If the budget or the assessment is modified, the modification shall become effective upon publication. Such hearing shall be held not later than thirty (30) days after receipt of a written request therefor.

(b) The assessment herein provided shall be levied against and paid by the purchaser. The term "purchaser" as used herein shall also include the owner of the timber where the owner processes or utilizes the forest products in its operations or where the owner sells forest products outside the state of Idaho and the forest products are scaled within the state of Idaho, provided that the assessment provided in this chapter shall not be levied against the United States of America, nor any unit nor agency thereof. The assessment shall be transmitted to the board on or before the twentieth day of each month for all timber harvested during the previous month.

(c) The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate account to be known as the "state scaling account," which is hereby created in the state treasury. Such account shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. All moneys in the "state scaling account" are hereby continually appropriated for the use of the board. The board may establish, maintain and use a rotary fund as provided by state law. The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "state scaling account." The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided in section 38-1205, Idaho Code. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this account for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act. All warrants on said "state scaling account" shall be drawn by the state auditor on vouchers by the board and the state board of examiners.

Approved March 23, 1993.

CHAPTER 131
(S.B. No. 1241)

AN ACT

APPROPRIATING MONEYS TO THE AGRICULTURAL RESEARCH EXTENSION SERVICE FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Board of Regents of the University of Idaho for the Agricultural Research Extension Service Program the following amount from the listed funds, to be expended according to the designated expense classes for the period July 1, 1993, through June 30, 1994:

FROM:	
General Fund	$17,132,500
Equine Education Fund	135,000
Hatch Fund	1,352,800
Regional Research Fund	561,900
Farm Safety Fund	20,000
Smith-Lever Fund	2,338,400
Interagency Billing and Receipts Fund	237,500
TOTAL	$21,778,100
FOR:	
Personnel Costs	$19,239,400
Operating Expenditures	2,353,100
Capital Outlay	185,600
TOTAL	$21,778,100

Approved March 23, 1993.

CHAPTER 132
(S.B. No. 1242)

AN ACT

APPROPRIATING MONEYS TO THE LOTTERY COMMISSION FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT TO CLARIFY THE SCOPE OF THE APPROPRIATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Lottery Commission in the Department of Self-Governing Agencies the following amounts, to be expended for administrative costs according to the designated expense classes from the listed fund for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	$1,668,100
Operating Expenditures	4,563,900
Capital Outlay	306,400
TOTAL	$6,538,400
FROM:	
State Lottery Fund	$6,538,400

SECTION 2. It is legislative intent that amounts necessary to pay prizes, retailer commissions, advertising and promotional costs shall

be continuously appropriated to the Lottery Commission under the provisions of Section 67-7428, Idaho Code.

Approved March 23, 1993.

CHAPTER 133
(H.B. No. 221, As Amended)

AN ACT

RELATING TO THE IDAHO HORSE BOARD; AMENDING SECTION 25-2506, IDAHO CODE, TO DELETE LANGUAGE RELATING TO PERSONS REQUESTING REFUNDS OF ASSESSMENTS; AND AMENDING CHAPTER 25, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2510, IDAHO CODE, TO PROVIDE A REFERENDUM FOR HORSE OWNERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-2506, Idaho Code, be, and the same is hereby amended to read as follows:

25-2506. DEPOSIT AND DISBURSEMENT OF FUNDS. Immediately upon receipt, all moneys received by the board shall be deposited in one or more separate accounts in the name of the board in one or more banks or trust companies approved under the provisions of chapter 27, title 67, Idaho Code, as state depositories. The board shall designate such banks or trust companies. All moneys so deposited are hereby appropriated to the Idaho horse board for the purpose of carrying out the provisions of this chapter.

Moneys can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the board.

Any assessments or money that may be deposited hereunder with the treasurer of the state of Idaho shall be paid to the board, and the state treasurer shall be reimbursed for the reasonable and necessary expenses incurred.

The right is reserved to the state of Idaho to audit the funds of the board at any time.

~~Any person shall have the right to request from the board in writing, within ten (10) days after payment thereof, a refund of all or any portion of the assessment levied hereunder and paid by him.~~

SECTION 2. That Chapter 25, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-2510, Idaho Code, and to read as follows:

25-2510. REFERENDUM FOR HORSE OWNERS. (1) After five (5) years from the effective date of this section, a referendum shall be held to determine if horse owners favor the continuation of the mandatory provisions prescribed in section 25-2505, Idaho Code. The question shall be submitted to all horse owners who had a brand inspection the year

prior to the referendum, by secret ballots upon which the words "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory program, the provisions of section 25-2505, Idaho Code, shall be extended indefinitely or until such time that the horse board deems it necessary to hold another referendum on the issue.

(2) After five (5) years from the effective date of the referendum required in the provisions of subsection (1) of this section, and every five (5) years thereafter, a referendum on the continuation of the mandatory assessment to fund the Idaho horse board may be held at the petition of horse owners, or at the request of the Idaho horse board. The question shall be submitted by secret ballots upon which the words, "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the question which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory assessment, all of the provisions of chapter 25, title 25, Idaho Code, shall continue. If a majority of the referendum vote is against continuing the mandatory assessment, the assessment imposed in section 25-2505, Idaho Code, shall cease to be mandatory on the date the director of the department of agriculture announces the results of the referendum vote. The procedures necessary to initiate a referendum under the provisions of this subsection are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such a referendum signed by ten percent (10%) or more of horse owners who have had a brand inspection, in either of the two (2) immediate past years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho horse board.

(3) (a) Any referendum shall be conducted only among owners who paid an assessment during one (1) of the previous two (2) years.

(b) Any referendum must be supervised by the Idaho department of agriculture.

(c) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(d) Notice of any referendum must be given by the Idaho horse board in a manner determined by it. The ballots must be prepared by the Idaho horse board and forwarded to eligible owners, who shall return them within twenty (20) days after mailing by the Idaho horse board.

(e) The Idaho horse board shall pay the costs of any referendum.

Approved March 24, 1993.

CHAPTER 134
(H.B. No. 214)

AN ACT

RELATING TO EDUCATION OF EXCEPTIONAL CHILDREN; AMENDING SECTION 33-2002, IDAHO CODE, TO PROVIDE THAT THE CHILD STUDY TEAM SHALL ASSESS THE IMPORTANCE AND NECESSITY OF TEACHING BRAILLE TO EACH CHILD WHO IS LEGALLY BLIND AND TO PROVIDE THAT IF LEARNING BRAILLE IS DETERMINED TO BE IMPORTANT TO A PARTICULAR CHILD, THE CHILD SHALL BE GIVEN THE OPPORTUNITY TO LEARN BRAILLE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-2002, Idaho Code, be, and the same is hereby amended to read as follows:

33-2002. RESPONSIBILITY OF SCHOOL DISTRICTS FOR EDUCATION OF CHILDREN WITH DISABILITIES. Each public school district is responsible for and shall provide for the special education and related services of children with disabilities enrolled therein.

Every public school district in the state shall provide instruction and training for persons between the ages of three (3) years and twenty-one (21) years who are children with disabilities as defined in this chapter and by the state board of education. The state board of education shall through its department of education determine eligibility criteria for children with disabilities, qualifications of special teachers and special personnel, programs of instruction and minimum standards for classrooms and equipment to be used in administering the provisions of this act.

The child study team shall assess the importance and necessity of teaching Braille to each child who is legally blind. Preference shall be given to Braille. If the child study team determines that learning Braille is important with respect to a particular child, the child shall be given the opportunity to learn Braille.

Approved March 24, 1993.

CHAPTER 135
(H.B. No. 32)

AN ACT

RELATING TO LICENSE PLATES FOR NATIONAL GUARD MEMBERS; AMENDING SECTION 49-120, IDAHO CODE, AS AMENDED BY CHAPTERS 35, 232 AND 261, LAWS OF 1992, TO PROVIDE PROPER CODE REFERENCES; AMENDING SECTION 49-402, IDAHO CODE, AS AMENDED BY CHAPTERS 35, 186 AND 261, LAWS OF 1992, TO PROVIDE PROPER CODE REFERENCES; AND AMENDING SECTION 49-404, IDAHO CODE, TO PROVIDE FOR DISTINCTIVE PLATES FOR ACTIVE MEMBERS OF THE IDAHO NATIONAL GUARD, AND TO REDUCE THE PRICE OF SUCH PLATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-120, Idaho Code, as amended by Chapters 35, 232 and 261, Laws of 1992, be, and the same is hereby amended to read as follows:

49-120. DEFINITIONS -- S.

(1) "Saddlemount combination" means a combination of vehicles in which a truck or truck tractor tows one (1), two (2) or three (3) trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. A smaller vehicle mounted completely on the frame of either the first or last vehicle may be used in a saddlemount combination.

(2) "Safety glazing materials" mean glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) "Safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(4) "Salvage pool" means a licensed vehicle dealer engaged primarily in the business of disposing of salvage vehicles, recovered stolen vehicles, or both.

(5) "School bus" means every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of "Minimum Standards for School Buses" and is used to transport children to or from school or in connection with school approved activities and includes buses operated by contract carriers.

(6) "Secretary" means the secretary of transportation of the United States.

(7) "Security agreement." (See section 28-9-105, Idaho Code)

(8) "Security interest." (See section 28-1-201, Idaho Code)

(9) "Sell," "sold," "buy," and "purchase," mean and include, as used in sections 49-2401 through 49-2406, Idaho Code, exchange, barter, gift, and offer or contract to sell or buy.

(10) "Semitrailer." (See "Trailer", section 49-121, Idaho Code)

(11) "Serious traffic violation" means conviction of an offense specified in 49 CFR part 383 while operating a commercial motor vehicle.

(12) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for use by pedestrians.

(13) "Signal." (See "Railroad sign", section 49-119, Idaho Code)

(14) "Slow moving vehicle" means any vehicle not normally operated upon the highways.

(15) "Snow tire." (See "Tires", section 49-121, Idaho Code)

(16) "Sold." (See "Sell", "buy", and "purchase", this section)

(17) "Solid rubber tire." (See "Tires", section 49-121, Idaho Code)

(~~17~~8) "Special license plate" means a license plate that is made available to the public as a personal alternative to the standard issue license plate. This definition shall not include the plates issued under sections 49-403, 49-403A, 49-404, 49-410, 49-415 and 49-415B, Idaho Code.

(~~18~~9) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including: ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and drag lines, and self-propelled cranes, and earth moving equipment. The term does not include travel trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(~~19~~20) "Specially constructed vehicle." (See "Vehicle", section 49-123, Idaho Code)

((20~~1~~) "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(2~~1~~2) "State" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of Canada.

(2~~2~~3) "Stop" means the act of or complete cessation from movement.

(2~~3~~4) "Stopping" means the act of any halting even momentarily of a vehicle.

(2~~4~~5) "Street." (See "Highways", section 49-109, Idaho Code)

(2~~5~~6) "Street rod" means any pre-1949 vehicle which has had a significant drive train update from a more modern vehicle. Changes may include engine, transmission, rear axle, and other suspension components. The body will be, or resemble the same as the manufacturer's original issue after its first sale after manufacture.

(2~~6~~7) "Studded tire." (See "Tires", section 49-121, Idaho Code)

(2~~7~~8) "Substandard width lane" means a lane that is too narrow for a bicycle and a motor vehicle to travel safely side by side within the lane.

(2~~8~~9) "Supplemental lot" means a physically separate location owned and maintained by a licensed dealer or manufacturer within the same or adjacent county as the principal place of business which meets all the requirements for a principal place of business.

(~~29~~30) "Suspension of driver's license" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's driver's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department.

(3~~0~~1) "Suspension of vehicle registration" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's vehicle registration or, in the case of

fleets of vehicles, all vehicle registrations in each fleet operated by a company. Upon suspension, the privileges of operating the vehicle or vehicles on Idaho highways is terminated until the difficulty that caused the suspension is corrected and notification is provided that the suspension has been lifted.

SECTION 2. That Section 49-402, Idaho Code, as amended by Chapters 35, 186 and 261, Laws of 1992, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds, designed for the purpose of carrying passengers and not used for hire shall be:

Vehicles one (1) and two (2) years old $36.48
Vehicles three (3) and four (4) years old 33.48
Vehicles five (5) and six (6) years old 26.28
Vehicles seven (7) and eight (8) years old 22.68
Vehicles over eight (8) years old 16.08

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers ending in 1, and proceeding consecutively through December for holders of validation registration stickers ending in 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all motor vehicles equipped to carry passengers and operated primarily for hire exclusively within the limits of an incorporated city and adjacent thereto, when the service outside the city is a part of a regular service rendered inside the city, and for school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twelve dollars and forty-eight cents ($12.48).

(3) For all hearses, ambulances and wreckers the annual fee shall be twenty-nine dollars and forty cents ($29.40), and these vehicles shall bear passenger car plates. No operator of a hearse, ambulance, or wrecker shall be entitled to operate them by virtue of any dealer's

license that may have been issued under the provisions of this chapter.

(4) For all motorcycles and all terrain vehicles the annual fee shall be nine dollars ($9.00). For operation of an ATV off the public highways, the fee specified in section 67-7122, Idaho Code, shall also be paid.

(5) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(6) Registration fees shall not be subject to refund.

(7) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(~~9~~8) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars ($25.00) and an annual program fee of fifteen dollars ($15.00) for all special license plate programs except for those license plates issued pursuant to sections 49-403, 49-403A, 49-404, 49-410, 49-415 and 49-415B, Idaho Code. The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs which are provided to the public as a personal alternative to the standard license plate requirements.

SECTION 3. That Section 49-404, Idaho Code, be, and the same is hereby amended to read as follows:

49-404. NATIONAL GUARD MEMBERS -- ~~SPECIAL~~ DISTINCTIVE PLATES. (1) In order to enhance visibility and identification of national guard members during mobilizations and emergencies, a~~A~~ny active member of the Idaho national guard residing in the state of Idaho may, upon application to the department, register not more than two (2) passenger motor vehicles and receive for each vehicle ~~special~~ distinctive national guard license plates in lieu of regular license plates. The ~~special~~ national guard license plates shall be designed, subject to the approval of the department, by the adjutant general. Proof of being an active member in the Idaho national guard must be furnished to the department before plates will be issued. ~~These special license plates shall be issued for one (1) year periods, commencing on January 1.~~

The Idaho national guard shall, prior to an individual's discharge from active duty in the national guard, require that the ~~special~~ national guard license plates either be turned in to the department or

exchanged for other proper license plates as a condition of discharge.

(2) ~~Active--members--of--the-Idaho-national-guard-will-notify-the department-at-a-time-to-be-set-by-the-department,-of--their--intention to--procure--special--license-plates-under-the-terms-specified-in-this section.-Failure-to-do-so-will-result-in-the-member-being-required--to accept--regular-license-plates-should-the-department-be-unable-to-procure-special-plates.-Special-plates-may-still-be-procured-when--available--but--members--of-the-Idaho-national-guard-will-be-subject-to-the usual-transfer-fee.~~

~~(3)~~ Whenever a member of the Idaho national guard transfers or assigns his title or interest to a vehicle especially registered under the provisions of this section, the registration shall expire but the member may hold his ~~special~~ national guard license plates which he may have reissued to him upon the payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(~~4~~3) In addition to the regular registration fee required in section 49-402(1), Idaho Code, the ~~applicant~~ national guard member shall pay the ~~initial-program~~ plate fee ~~and-the-annual-program-fee~~ specified in section 49-~~402(9)~~450, Idaho Code.

Approved March 25, 1993.

CHAPTER 136
(H.B. No. 74, As Amended)

AN ACT

RELATING TO NOISE ABATEMENT; REPEALING SECTION 67-7125, IDAHO CODE; AMENDING CHAPTER 71, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-7125, IDAHO CODE, TO PROHIBIT DISCONNECTION, ALTERATION OR MODIFICATION OF A NOISE SUPPRESSING SYSTEM ON A MOTORBIKE OR ALL TERRAIN VEHICLE IN ORDER TO INCREASE THE VEHICLE'S NOISE EMISSION ABOVE NINETY-SIX DECIBELS, TO PROHIBIT OPERATION OF SUCH A VEHICLE WHILE THE VEHICLE'S NOISE EMISSION EXCEEDS NINETY-SIX DECIBELS OR WHILE ITS NOISE SUPPRESSING SYSTEM HAS BEEN DISCONNECTED, ALTERED OR MODIFIED IN VIOLATION OF THE PROVISIONS OF THE SECTION, TO PROHIBIT OPERATION OF SUCH A VEHICLE WITHOUT A SPARK ARRESTER DEVICE AND TO EXEMPT FROM THAT REQUIREMENT MOTORBIKES OR ALL TERRAIN VEHICLES BEING OPERATED OFF THE HIGHWAY IN AN ORGANIZED RACING OR COMPETITIVE EVENT, TO ESTABLISH THE NOISE LIMITS APPLICABLE TO VEHICLES SUBJECT TO THE PROVISIONS OF THE SECTION, TO PROVIDE STANDARDS AND PROCEDURES FOR MEASURING NOISE LIMITS AND TO EXEMPT MOTORBIKES OR ALL TERRAIN VEHICLES BEING OPERATED OFF THE HIGHWAY IN AN ORGANIZED RACING OR COMPETITIVE EVENT FROM THE NOISE LIMITS, TO PROVIDE FOR THE ADOPTION OF REGULATIONS, AND TO PROVIDE THAT A SHOWING THAT THE NOISE EMISSION LEVEL OF A VEHICLE SUBJECT TO AND NOT OTHERWISE EXEMPT FROM THE PROVISIONS OF THE SECTION EXCEEDS NINETY-SIX DECIBELS SHALL BE PRIMA FACIE EVIDENCE OF A VIOLATION OF THE PROVISIONS OF THE SECTION; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-7125, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 71, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-7125, Idaho Code, and to read as follows:

67-7125. NOISE ABATEMENT. (1) Except as hereinafter provided, every vehicle subject to registration under section 67-7122, Idaho Code, shall comply with the provisions of this section. Every vehicle subject to the provisions of this section shall at all times be equipped with an exhaust system in good working order and in constant operation. If the vehicle was originally equipped with a noise suppressing system or if the vehicle is required by law or regulation of this state or the federal government to have a noise suppressing system, that system shall be maintained in good working order. No person shall disconnect, modify or alter any part of that system in any manner which will amplify or increase the vehicle's noise emission above the noise limits established in subsection (3) of this section, except temporarily in order to make repairs, replacements or adjustments. No person shall operate and no owner shall cause or permit to be operated any vehicle while the vehicle's noise emission exceeds the noise limits established in subsection (3) of this section or while the vehicle's noise suppressing system is disconnected, modified or altered in violation of the provisions of this section.

(2) No person shall operate a vehicle subject to the provisions of this section unless that vehicle is equipped with a spark arrester device, affixed to the exhaust system, of a type qualified and rated by the United States forest service. The provisions of this subsection shall not apply to vehicles being operated off the highway in an organized racing or competitive event which is conducted on private land with the consent of the landowner.

(3) Any vehicle subject to the provisions of this section shall at all times be equipped with a noise suppressing system or other device which limits noise emission to a base level of not more than ninety-six (96) decibels when measured on the "A" scale using standards and procedures established by the society of automotive engineers (SAE), specifically SAE standard J1287, June, 1988, describing a test of a stationary vehicle with sound measured twenty (20) inches and forty-five (45) degrees from the exhaust outlet, or as otherwise described. For enforcement purposes, a correction factor of plus two (+2) decibels measured on the "A" scale for site variation and plus one (+1) decibel measured on the "A" scale for instrumentation error shall be applied to the base level in assessing any violation. The provisions of this subsection shall not apply to vehicles being operated off the highway in an organized racing or competitive event which is conducted on private land with the consent of the landowner or on public land under permit.

(a) The department shall adopt regulations in accordance with chapter 52, title 67, Idaho Code, establishing the test procedures

and instrumentation to be utilized. These procedures shall incorporate requirements for the test site environment and sound measuring equipment as set forth in SAE standard J1287, June, 1988.

(b) Instrumentation shall include but not be limited to a sound level meter meeting the type 1, type S1A, type 2, or type S2A requirements of the American national standards institute (ANSI) specification for sound level meters, S1.4-1983; a sound level calibrator, microphone wind screen, external engine speed tachometer.

(4) A showing that the noise emission level of any vehicle subject to and not otherwise exempt from the provisions of this section exceeds ninety-six (96) decibels, as described and tested in subsection (3) of this section, shall be prima facie evidence of a violation of subsection (1) of this section.

SECTION 3. This act shall be in full force and effect on and after July 1, 1994.

Approved March 25, 1993.

CHAPTER 137
(H.B. No. 272)

AN ACT

RELATING TO HOSPITAL DISTRICTS; AMENDING SECTION 39-1319, IDAHO CODE, TO CORRECT A CITATION; AMENDING SECTION 39-1325a, IDAHO CODE, TO GOVERN WHEN PETITIONS FOR DISSOLUTION MAY FIRST BE FILED, AND TO GOVERN DISSOLUTION WHEN A DISTRICT INCLUDES TERRITORY IN MORE THAN ONE COUNTY; AMENDING CHAPTER 13, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1354, IDAHO CODE, TO PROVIDE CONDITIONS FOR ANNEXATION OF TERRITORY NOT HAVING A TAX SUPPORTED HOSPITAL; AMENDING CHAPTER 13, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1355, IDAHO CODE, TO PROVIDE CONDITIONS FOR THE CONSOLIDATION OF EXISTING TAX SUPPORTED HOSPITALS; AMENDING CHAPTER 13, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1356, IDAHO CODE, TO PROVIDE THE METHOD FOR EQUALIZING THE LEVY WHEN DISTRICTS ARE CONSOLIDATED; AND AMENDING CHAPTER 13, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1357, IDAHO CODE, TO PROVIDE ADJUSTMENT OF BOUNDARY LINES OR CONSOLIDATION OF ADJOINING HOSPITAL DISTRICTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1319, Idaho Code, be, and the same is hereby amended to read as follows:

39-1319. DEFINITIONS. A "hospital district" is one to furnish general hospital services, and together with such hospital services, nursing home services, or medical clinic services to the general public and all other such services as may be necessary for the care of the injured, maimed, sick, disabled, convalescent or long-term care

patients. As used in sections 39-1318 through 39-1353~~a~~7, Idaho Code, "medical clinic" means a place devoted primarily to the maintenance and operation of facilities for outpatient medical, surgical and emergency care of acute and chronic conditions or injury.

The word "board" as used in this act shall mean the board of trustees of the district. A "qualified elector" of a district within the meaning of and entitled to vote under this act, is a person qualified to vote at general elections in this state, and who has been a bona fide resident of the district for at least thirty (30) days prior to any election in the district. A "taxpayer" within the meaning of and as used in this act is a person or the husband or wife of a person whose name appears on the tax rolls of the county and is there assessed with unexempted real or personal property owned and subject to taxation within the boundaries of the district.

Whenever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean once a week for three (3) consecutive weeks in at least one (1) newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three (3) weeks, but not less than fourteen (14) days (excluding the first day of publication), shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication.

SECTION 2. That Section 39-1325a, Idaho Code, be, and the same is hereby amended to read as follows:

39-1325a. PETITIONS FOR DISSOLUTION OF HOSPITAL DISTRICTS. (1) Proceedings for the dissolution of a hospital district may be initiated by a petition containing the signatures of qualified electors of the district or owners of property within the district equal in number to ten per cent (10%) of the qualified electors and taxpayers of the district, the same percentage required for the organization of the district, but not earlier than four (4) years after the date of its establishment.

(2) The petition, when completed and verified, shall be filed with the clerk of the court of the county or counties if more than one (1) county is involved. The county commissioners shall publish notice and hold a hearing on the matter. If necessary, they shall hold an election on the matter. The hearing and election shall be held in accordance with the terms and provisions of sections 40-1803 through 40-1809, Idaho Code. The disposition of hospital district assets on dissolution and the provision for payment of district indebtedness shall be made in accordance with the provisions of sections 63-4105 and 63-4106, Idaho Code.

(3) If the hospital district embraces territory in more than one (1) county, an election for its dissolution shall be deemed approved only if a majority of the votes cast in each such county were cast in the affirmative. If, upon the canvass of ballots, it be determined that the proposition has been approved, the board of county commissioners of each county shall enter its order to that effect, and the order shall by them be made a matter of record.

SECTION 3. That Chapter 13, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1354, Idaho Code, and to read as follows:

39-1354. ANNEXATION OF TERRITORY NOT HAVING A TAX SUPPORTED HOSPITAL -- PETITIONS AND SIGNATURES -- ELECTION. (1) Any area contiguous to a hospital district which does not support another tax supported hospital may become annexed to the district by petition and election.

(2) A petition for annexation shall comply with the requirements of section 39-1320, Idaho Code, in the area seeking to become annexed to the hospital district. A true copy of the petition shall be transmitted to the board of trustees of the district, and to the board of county commissioners in each county affected. The board of trustees of the hospital district may approve or disapprove such petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When it has received notice of approval of the board of trustees of the district, the board of county commissioners in the county or counties in which the petition arose shall enter its order calling for an election on the question. The election shall be held in the area proposed to be annexed. Notice of the election shall be given, the election shall be conducted, and the returns thereof canvassed as provided in sections 39-1323, 39-1324 and 39-1325, Idaho Code. The ballot shall bear the question: "Shall .... become part of the .... hospital district .... Yes" and "Shall .... become part of the .... hospital district .... No" each followed by a box in which the voter may express his choice by marking a cross. The proposal shall be deemed approved only if the majority of the votes cast is in the affirmative.

(4) If the proposal has been approved at the election, the board of county commissioners in each county in which the district is located following annexation shall enter its order amending the boundaries of the district, and a copy shall be transmitted to the board of trustees of the hospital district. Annexation shall be effective as of the date of the last such order entered.

(5) Such other notices as may be required by law shall be filed by the board of trustees of the hospital district with the state tax commission within ten (10) days of the effective date of the change, including a legal description and map of the altered boundaries.

(6) Addition of new territory to an existing hospital district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the term for which elected. When a vacancy occurs, appointment shall be made as provided in section 39-1326, Idaho Code.

SECTION 4. That Chapter 13, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1355, Idaho Code, and to read as follows:

39-1355. EXISTING TAX SUPPORTED HOSPITALS MAY CONSOLIDATE. The ownership and operation of any municipal, city/county, county, dis-

trict, or tax supported community hospital or medical clinic may be consolidated with an established hospital district by majority vote of the qualified electors of the established hospital district and of the political subdivision having jurisdiction over such other tax supported hospital according to procedure set forth in section 39-1354, Idaho Code. A true copy of the petition and the established hospital district board's notice of approval or disapproval shall be sent to the governing body of the political subdivision having jurisdiction over a petitioning hospital. A true copy of that petition shall, at the same time, be sent to the governing body of the nonpetitioning hospital. When the notice carries the approval of the boards, or other governing bodies of both hospitals, that governing body shall conduct the election and give notice of the results to the hospital district board and the relevant boards of county commissioners as provided in section 39-1354, Idaho Code. As a result of any such consolidation, the boundaries of the hospital district remaining after consolidation shall be expanded to include the political subdivision which previously had jurisdiction over the consolidated hospital or medical clinic.

SECTION 5. That Chapter 13, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1356, Idaho Code, and to read as follows:

39-1356. EQUALIZATION OF LEVY BETWEEN CONSOLIDATING HOSPITALS. (1) When two (2) districts' hospitals or medical clinics have agreed to consolidate, the tax levies of the two (2) hospitals will be equalized in the following manner: the certified budget figures from ad valorem taxes of the district will be added together. The resulting figure will provide the base budget amount for the new consolidated district. In any such consolidation, the existing bonded debt of any district or districts shall not become the obligation of the proposed consolidated hospital district. The debt shall remain an obligation of the property which incurred the indebtedness.

SECTION 6. That Chapter 13, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-1357, Idaho Code, and to read as follows:

39-1357. ADJUSTMENT OF BOUNDARY LINES OR CONSOLIDATION OF HOSPITAL DISTRICTS. When there are two (2) or more hospital districts, which have at least one (1) common boundary, the boards of trustees of the hospital districts, meeting together, may determine that it is in the best interest of the qualified electors and prospective hospital patients that the boundary lines be adjusted or that the districts be consolidated, as herein provided.

The boards of trustees shall jointly prepare a petition describing the boundaries of the existing hospital districts, the names of the existing hospital districts, and praying for the reorganization of the territory therein described as one (1) or more hospital districts to be known as the ".... hospital district or districts" and with bound-

aries as set forth in the petition.

The petition shall be signed by the chairpersons of the hospital boards upon majority approval of the respective boards involved in the boundary adjustment or consolidation.

The petition shall be forwarded to the clerk of the board of county commissioners in each of the counties affected who shall verify the signatures, and shall file the petition. Thereupon, the board of county commissioners in each of the counties affected shall proceed with the hearing and resolution as outlined in sections 39-1320, 39-1321 and 39-1322, Idaho Code, and an election in the manner required for the establishment of a hospital district.

In the order granting the petition and adjusting the boundaries or establishing consolidation, the board of county commissioners in all counties affected shall certify the new boundaries and the name of the district or districts.

A copy of the order shall be transmitted to the board of trustees of the hospital districts involved.

Such other notices as may be required by law shall be filed by the board of trustees of the district, including a legal description and map of altered boundaries to be filed with the state tax commission within ten (10) days of the effective date of the change.

Following boundary adjustment, the board of county commissioners within five (5) days shall take action to reaffirm members of the board of trustees, or to appoint members of the board or boards, who shall be chosen from the members of the boards initiating the boundary adjustment to the extent possible. These trustees shall serve until the next annual election of trustees or until their successors are elected and qualified as provided in section 39-1326, Idaho Code. The board or boards of trustees shall be sworn by a member of the board of county commissioners.

Following a consolidation, the board of county commissioners within five (5) days shall appoint the members of the first board of trustees, who shall be chosen from the members of the boards of the consolidated districts and who shall serve until the next annual election of trustees or until their successors are elected and qualified. The board shall be sworn by a member of the board of county commissioners.

Approved March 25, 1993.

CHAPTER 138
(H.B. No. 291, As Amended)

AN ACT

RELATING TO AUDITS BY THE TRANSPORTATION DEPARTMENT; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-439, IDAHO CODE, TO PROVIDE FOR AUDIT GUIDELINES THAT THE DEPARTMENT MUST FOLLOW, TO PROVIDE FOR RULES AND REGULATIONS, TO PROVIDE FOR AWARDING OF ATTORNEY FEES OR COSTS FOR UNLAWFUL AUDITS AND TO PROVIDE FOR APPEAL PROCEDURES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-439, Idaho Code, and to read as follows:

49-439. AUDIT GUIDELINES. The department may audit an owner of motor vehicles subject to fees pursuant to this chapter once every five (5) years unless probable cause, as defined by department rules and regulations, exists that the owner has not paid fees due pursuant to this chapter or has underreported or underpaid fees due pursuant to this chapter. An owner selected for audit more frequently than the five (5) years may have the audit selection reviewed for determination of the absence of probable cause by the district court of the county where the owner resides or where the owner's place of business is located or in Ada County, at the discretion of the owner. The department shall promulgate rules and regulations outlining its procedures for audit selection, assignment and inventory. Any owner of motor vehicles who has been subjected to an audit by the department that has not been in compliance with the provisions of this section or rules and regulations promulgated pursuant thereto may recover attorney fees and costs as may be determined by a court or may receive his attorney fees and costs if granted, all or in part, by the director all in accordance with section 12-117, Idaho Code.

Approved March 25, 1993.

CHAPTER 139
(H.B. No. 293)

AN ACT

RELATING TO SOLID WASTE; AMENDING SECTION 39-7401, IDAHO CODE, TO PROVIDE FURTHER LEGISLATIVE FINDINGS AND PURPOSE; AMENDING SECTION 39-7402, IDAHO CODE, TO REVISE APPLICABILITY REQUIREMENTS; AMENDING SECTION 39-7421, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-7403, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-7404, IDAHO CODE, TO REVISE STANDARDS FOR RULES AND REGULATIONS; AMENDING SECTION 39-7406, IDAHO CODE, TO REVISE ROLES OF COUNTIES, DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE AND PUBLIC HEALTH DISTRICTS; AMENDING SECTION 39-7407, IDAHO CODE, TO REVISE REQUIREMENTS FOR LOCATIONS RESTRICTIONS AND SITE CERTIFICATION; AMENDING SECTION 39-7408, IDAHO CODE, TO PROVIDE DIFFERENT PROCEDURES FOR SITE CERTIFICATION; AMENDING SECTION 39-7409, IDAHO CODE, TO REVISE DESIGN STANDARDS; REPEALING SECTIONS 39-7410 AND 39-7414, IDAHO CODE; AMENDING SECTION 39-7413, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE STANDARDS FOR GROUND WATER MONITORING; AMENDING CHAPTER 74, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-7411, IDAHO CODE, TO PROVIDE PROCEDURES FOR DESIGN REVIEW OF A MSWLF UNIT; AMENDING SECTION 39-7411, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE

OPERATING STANDARDS, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-7412, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REVISE STANDARDS FOR REVIEW OF OPERATIONS PLANS, AND TO CORRECT CODE REFERENCES; AMENDING CHAPTER 74, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-7414, IDAHO CODE, TO PROVIDE FOR ASSESSMENT MONITORING AND CORRECTIVE ACTION; AMENDING SECTION 39-7415, IDAHO CODE, TO REVISE CLOSURE STANDARDS; AMENDING SECTION 39-7416, IDAHO CODE, TO PROVIDE THAT POST CLOSURE STANDARDS APPLY TO ALL MSWLF UNITS THAT RECEIVE WASTES ON OR AFTER OCTOBER 9, 1993; AMENDING SECTION 39-7417, IDAHO CODE, TO REVISE FINANCIAL ASSURANCE GUIDELINES; AMENDING SECTION 39-7418, IDAHO CODE, TO REVISE REQUIREMENTS FOR MODIFICATIONS TO SITES; AMENDING SECTION 39-7419, IDAHO CODE, TO PROVIDE FOR INSPECTIONS; AMENDING SECTION 39-7420, IDAHO CODE, TO REVISE WHAT CONSTITUTES VIOLATIONS AND TO PROVIDE OTHER ENFORCEMENT MECHANISMS; AMENDING SECTION 39-105, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 39-414, IDAHO CODE, TO PROVIDE A CORRECT CITATION; TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-7401, Idaho Code, be, and the same is hereby amended to read as follows:

39-7401. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds:

(a) That adverse public health and environmental impacts can result from the improper land disposal of solid waste and that the need for establishing safe sites with adequate capacity for the disposal of solid waste is a matter of statewide concern and necessity; and

(b) That the resource conservation and recovery act (42 U.S.C. sec. 6901, et seq.) as amended, and regulations adopted pursuant thereto, establish complex, detailed and costly provisions for the location, design, operation and monitoring of solid waste disposal sites, including such sites as may be operated pursuant to the responsibility established in chapter 44, title 31, Idaho Code; and

(c) That a state program to implement flexible standards provided in 40 CFR 258, if approved by the U.S. environmental protection agency, enables a state to take advantage of site specific factors in the design and operation of solid waste facilities and flexibility in meeting federal criteria set forth in that regulation; and

(d) That 40 CFR 258 provides that such a program of flexible standards requires approvals by a designated state agency; and

(e) That chapter 1, title 39, Idaho Code, vests the department of health and welfare with the responsibility to issue a certificate of suitability concerning prospective solid waste landfill sites, to approve solid waste facility and ground water monitoring programs and to provide approvals pursuant to 40 CFR 258; and

(f) That chapter 44, title 31, Idaho Code, imposes on the coun-

ties the primary responsibility for the development and operation of a solid waste management system; and

(g) That chapter 4, title 39, Idaho Code, vests the health districts with the primary responsibility for the review of solid waste facility operations plans and the enforcement of solid waste management operations; and

(h) That the coordination and timeliness of response to federal law on the part of all public officials within the state is critical to compliance with federal regulations ~~as explained in 40 CFR 258, preamble, section IV, A ; and~~

~~(d) That the director of the department of health and welfare should have the responsibility and authority to issue a certificate of suitability concerning prospective solid waste disposal sites, to provide advisory review and comment regarding solid waste disposal facility design, and to approve ground water monitoring plans pursuant to the provisions of this chapter and section 39-105, Idaho Code; and~~

~~(e) That the respective district boards of health should have the responsibility and authority to issue a certificate of compliance for operating plans and to monitor operations and enforce operational standards for solid waste disposal sites pursuant to the provisions of this chapter and section 39-414, Idaho Code,~~ the ability of each affected agency to carry out their statutory responsibilities and the avoidance of excessive construction and public expenditures.

(2) Therefore, it is the intent of the legislature to establish a program of solid waste management which complies with 40 CFR 258 and facilitates the incorporation of flexible standards in facility design and operation. ~~T~~the legislature hereby establishes the solid waste disposal standards and procedures outlined herein and a facility approval process for the state of Idaho, the political subdivisions thereof, and any private solid waste disposal site owner in order to facilitate the development and operation of solid waste disposal sites, to effect timely and responsible completion of statutory duties and to ensure protection of human health and the environment, to protect the air, land and waters of the state of Idaho.

SECTION 2. That Section 39-7402, Idaho Code, be, and the same is hereby amended to read as follows:

39-7402. APPLICABILITY. (1) The standards and procedures set forth in this chapter apply to owners and operators of new municipal solid waste landfill (MSWLF) units, existing MSWLF units, and lateral expansions of existing MSWLF units, except as otherwise specifically provided.

(2) The requirements of this chapter do not apply to MSWLF units that ceased to accept waste on or prior to October 9, 1991.

(3) MSWLF units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this chapter, except as provided in 40 CFR 258.1(d) or as otherwise expressly provided herein.

(4) All MSWLF units that ~~will~~ receive waste on or after October 9, 1993, must comply with all of the requirements of this chapter,

unless otherwise allowed in 40 CFR 258.1(f).

(5) MSWLF units failing to satisfy these standards shall cease operation and shall not accept municipal solid waste for disposal by order of the division of environmental quality and/or the district health department until provisions of this chapter are complied with unless a compliance schedule has been approved by the director of the department of health and welfare and/or the district health department.

(6) MSWLF units failing to satisfy the requirements set forth in this act are considered open dumps for purposes of state solid waste management planning and are prohibited under section 4005 of RCRA.

(7) MSWLF units containing sewage sludge and which fail to satisfy the criteria set forth in 40 CFR 258 violate sections 309 and 405(e) of the clean water act.

SECTION 3. That Section 39-7421, Idaho Code, be, and the same is hereby amended to read as follows:

39-742~~1~~02A. EXCLUDED FACILITIES. This chapter shall not apply to any facility subject to the provisions of subtitle C of RCRA, the hazardous waste management act of 1983, as amended (section 39-4401, et seq., Idaho Code) or the state hazardous waste facility siting act, as amended (section 39-5801, et seq., Idaho Code).

SECTION 4. That Section 39-7403, Idaho Code, be, and the same is hereby amended to read as follows:

39-7403. DEFINITIONS. As used in this chapter:

(1) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with 40 CFR 258.60.

(2) "Agricultural wastes" mean wastes generated on farms resulting from the production of agricultural products including, but not limited to, manures and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds but do not include wastes that are classified as hazardous.

(3) "Applicant" means the owner or the operator with the owner's written consent.

(4) "Aquifer" means a geological formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

(~~4~~5) "Board" means the Idaho board of health and welfare.

(~~5~~6) "Buffer zone" means that part of a facility that lies between the active portion and the property boundary.

(~~6~~7) "Clean soils and clean dredge spoils" mean soils and dredge spoils which are not hazardous wastes or problem wastes as defined in this section.

(~~7~~8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses and other nonmanufacturing activities, excluding residential and industrial wastes.

(~~8~~9) "Construction/demolition waste" means the waste building materials, packaging and rubble resulting from construction, remodel-

ing, repair and demolition operations on pavements, houses, commercial buildings and other structures. Such waste includes, but is not limited to, bricks, concrete, other masonry materials, soil, rock, lumber, road spoils, rebar, paving materials and tree stumps. Noninert wastes and asbestos wastes are not considered to be demolition waste for the purposes of this chapter.

(9~~1~~0) "Contaminate" means to allow discharge of a substance from a landfill that would cause:

(a) The concentration of that substance in the ground water to exceed the maximum contamination level (MCL) specified in 40 CFR 258.40, Idaho drinking water standards; or

(b) A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contamination level specified in paragraph (a) of this subsection; or

(c) A statistically significant increase above background in the concentration of a substance which:

(i) is not specified in paragraph (a) of this subsection; and

(ii) is a result of the disposal of solid waste; and

(iii) has been determined by the department to present a substantial risk to human health or the environment in the concentrations found at the point of compliance.

(10~~1~~) "County" means any county in the state of Idaho.

(11~~2~~) "Cover material" means soil or other suitable material that is used to protect the active portion of the MSWLF unit.

(12~~3~~) "~~Department~~ Director" means the director of the Idaho department of health and welfare.

(14) "Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of October 9, 1993.

(13~~5~~) "Facility" means all contiguous land~~,--including--buffer zones,~~ and structures, buffer zones, and other appurtenances and improvements on the land used for ~~compliance-with--the--provisions--of this-chapter~~ the disposal of solid waste.

(14~~6~~) "Floodplain" means the area encompassed by the one hundred (100) year flood as defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in 40 CFR 258.11.

(15~~7~~) "Ground water" means water below the land surface in a zone of saturation.

(16~~8~~) "Health district" means one (1) of the seven (7) district health departments of the state of Idaho.

(17~~9~~) "Holocene fault" means a fault characterized as a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side and holocene being the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(20) "Household waste" means any solid waste, including garbage, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(21~~0~~) "Industrial solid waste" means solid waste generated by

manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(~~19~~22) "Inert wastes" mean noncombustible, nonhazardous, nonputresible, nonleaching solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack.

(~~20~~3) "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile.

(~~21~~4) "Landspreading disposal facility" or "land application unit" means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface, excluding manure spreading operations, at greater than agronomic rates and soil conditioners and immobilization rates.

(~~22~~5) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

(~~23~~6) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

(~~24~~7) "Limited purpose landfill" means a landfill that receives solid waste of limited type with known and consistent composition other than wood wastes, municipal solid waste, inert waste and construction/demolition waste.

(~~25~~8) "Liquid waste" as defined in 40 CFR 258.28(3c)(1).

~~(26)--"Liquid--waste"--means-any-waste-material-that-is-determined to-contain-free-liquids-as-described-in-"test-methods--for--evaluating solid-wastes,-physical/chemical-methods"-(EPA-pub.-no.-SW-846).~~

~~(27)--"Lower--explosive-limits"-mean-the-lowest-percentage-by-volume-of-methane-gas-which-will-propagate-a-flame-in-air-at--twenty-five (25)-degrees-centigrade-and-atmospheric-pressure.~~

(~~28~~9) "Monofill" means a landfill which contains a specific waste whose waste stream characteristics remain unchanged over time and may include special wastes, problem wastes or other consistent characteristic wastes but do not include wastes regulated under any other applicable regulations.

(~~29~~30) "Municipal solid waste landfill unit (MSWLF)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

(~~30~~1) "New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

(~~31~~2) "Open burning" means the combustion of solid waste without: (a) control of combustion air to maintain adequate temperature for efficient combustion; (b) containment of the combustion reaction in an enclosed device to provide sufficient resident time and mixing for complete combustion; and (c) control of the emission of the combustion products.

(~~32~~3) "Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

(~~33~~4) "Owner" means the person(s) who owns a facility or part of a facility.

(~~34~~5) "Permeability" means the capacity of a material to transmit a ~~fluid~~ liquid. For the purposes of this chapter permeability is expressed in terms of hydraulic conductivity of water in centimeters~~-per-~~second units of measurement. ~~Soils-and-synthetic--liners-with-an-hydraulic-conductivity-of-1-X-10-7-cm/sec-or-less-are-considered-impermeable.~~

(~~35~~6) "Person" means an individual, association, firm, partnership, political subdivision, public or private corporation, state or federal agency, municipality, industry, or any other legal entity whatsoever.

(~~36~~7) "Pile" or "waste pile" means any noncontainerized ~~accumulation-of~~ solid, nonflowing waste that is ~~used~~ accumulated for treatment or storage.

(~~37~~8) "Plan of operation" means the written plan developed by an owner or operator of a MSWLF unit detailing how the facility is to be operated during its active life, during closure, and throughout the post closure period.

(~~38~~9) "Point of compliance" means a vertical surface located at the hydraulically downgradient intercept with the uppermost aquifer at which a release from a waste management unit measured as change in constituent values will trigger assessment monitoring. Point of compliance shall be used to define the facility design, location and frequency of ground water monitoring wells and ~~types,-timing,--and--costs of~~ corrective action. ~~Point--of-compliance-shall-be-located-on-land owned-by-the-owner-of-the-MSWLF-unit-and--no--more--than--one--hundred fifty--(150)--meters-downgradient-from-the-active-area-of-the-landfill to-be-monitored-unless-the-preponderance-of-scientific--evidence--supports-a-location-closer-to-the-active-area.~~

(~~39~~40) "Post closure" means the requirements placed upon the MSWLF unit after closure to ensure their environmental safety for ~~at least~~ a thirty (30) year period or until the site becomes stabilized in accordance with section 39-7416, Idaho Code.

~~(40)--"Problem-wastes"-mean:~~

~~(a)--Soils-removed-during-remediation-of-a-contaminated-site,-or-a hazardous-waste-site-closure-or-other-cleanup-efforts-and--actions which--contain-harmful-substances-but-are-not-designated-hazardous wastes;-or~~

~~(b)--Dredge-spoils-resulting-from-the-dredging-of--surface--waters of--the--state-where-contaminants-are-present-in-the-dredge-spoils at-concentrations-not-suitable-for-open--water--disposal--and--the dredge--spoils--are--not-dangerous-wastes-and-are-not-regulated-by~~

~~section-404-of-the-federal-clean-water-act-(PL-95-217).~~

(41) "Processing" means an operation conducted on solid waste to prepare it for disposal.

~~(42)--"Putrescible--waste"--means-solid-waste-which-contains-material-capable-of-being-decomposed-by-microorganisms.~~

(4~~3~~2) "Qualified professional" means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in compliance with applicable provisions of the Idaho Code.

(4~~4~~3) "RCRA" means the resource conservation and recovery act (42 U.S.C. sec. 6901 et seq.), as amended.

~~(45)--"Reserved"--means--a--section--not-currently-governed-by-the requirements-of-this-chapter-which-is-set-aside--for--possible--future legislative-consideration.~~

(4~~6~~4) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(4~~7~~5) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(4~~8~~6) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(4~~9~~7) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

(~~50~~48) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a waste water treatment plant.

(~~51~~49) "Solid waste" means any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined in the atomic energy act of 1954, as amended (68 Stat. 923). These regulations shall not apply to the following solid wastes:

(a) Overburden, waste dumps and low grade stockpiles from mining operations;

(b) Liquid wastes whose discharge or potential discharge is regulated under federal, state or local water pollution permits;

(c) Hazardous wastes as designated in the ~~radiation-and-nuclear materials~~ hazardous waste management act, chapter ~~30~~ 44, title 39, Idaho Code~~,-or-in-40-CFR-250,-appendix-II~~;

(d) Wood waste used for ornamental, animal bedding, mulch and plant bedding and road building purposes;

(e) Agricultural wastes, limited to manures and crop residues, returned to the soils at agronomic rates;

(f) Clean soils and clean dredge spoils as otherwise regulated under section 404 of the federal clean water act (PL 95-217);

(g) Septage taken to a sewage treatment plant permitted by either the U.S. environmental protection agency or the department;

(h) Radioactive wastes, defined in the radiation and nuclear materials act, chapter 30, title 39, Idaho Code; and

(i) Wood debris resulting from the harvesting of timber and the disposal of which is permitted under chapter 1, title 38, Idaho Code.

(~~52~~0) "Special waste" means those wastes which require special treatment or handling after it arrives at the disposal site. The term includes, but is not limited to, asbestos containing material, petroleum contaminated soils, low-level PCB containing material, low-level dioxin containing material and uncut tires.

(~~53~~1) "Statistically significant" means significant as determined by ANOVA analysis of variance as applied within 40 CFR 258.53(h)(2) or as provided by 40 CFR 258.53(g)(5).

(~~54~~2) "Uppermost aquifer" means the geological formation nearest the natural ground surface that is an aquifer as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(~~55~~3) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(~~56~~4) "Water quality standard" means a standard set for maximum allowable contamination in surface waters and ground water as set forth in the water quality standards for waters for the state of Idaho (IDAPA 16.01.2001).

(~~57~~5) "Wetlands" as defined in 40 CFR 232.2(r).

(~~58~~6) "Wood waste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel and log yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

Undefined terms shall be given their usual and ordinary meaning within the context of the provisions of this chapter.

SECTION 5. That Section 39-7404, Idaho Code, be, and the same is hereby amended to read as follows:

39-7404. CONSISTENCY WITH FEDERAL LAW -- STATUS OF APPENDICES. The legislature intends that the state of Idaho enact and carry out a solid waste program that will enable the state to achieve approved state status with respect to solid waste disposal facility regulation from the federal government.

The legislature finds that subtitle D of RCRA, and in particular the code of federal regulations, title 40, part 257 and 258, establish complex, detailed and costly provisions for the disposal of solid waste. By the provisions of this chapter, the legislature desires to avoid duplicative or conflicting state and federal regulatory systems and allow local MSWLF unit owners the maximum flexibility possible under 40 CFR 257 and 258, to meet the substantive goals of protection of human health and the environment with consideration for actual site

and climatic conditions.

The board may not promulgate any rule or regulation pursuant to this act that would impose conditions or requirements more stringent or broader in scope than the referenced RCRA regulations of the United States environmental protection agency or the provisions of this chapter. Until ~~state technical guidance is~~ regulations are adopted, agency conclusions in appendix B through appendix H, inclusive, ~~40 CFR 258~~ per the "Federal Register" of October 9, 1991, shall be ~~adopted--and~~ used for technical guidance for relevant provisions of this chapter.

SECTION 6. That Section 39-7406, Idaho Code, be, and the same is hereby amended to read as follows:

39-7406. RESPECTIVE ROLES OF COUNTY, ~~DEPARTMENT~~ DIRECTOR AND HEALTH DISTRICT -- LIBERAL CONSTRUCTION. (1) The county, ~~department~~ director and health district each perform key roles in statewide solid waste management. Principal jurisdiction for the various functions of solid waste regulation and management as it pertains to site selection, development, ~~and~~ operation, and closure shall be carried out as outlined herein:

(a) Each county may select a solid waste ~~disposal~~ landfill site or sites, evaluate said site(s) for compliance with site certification criteria, develop design plans for construction and operation of MSWLF unit(s), including ground water monitoring ~~plans~~ programs, provide for public review of its ~~proposed development~~ site certification, facility design and operation plans through the conduct of ~~at least one (1) public hearing when design plans are completed~~ a twenty-eight (28) day public comment period, publish legal notices, serve as the repository of funds established for financial assurance, cooperate with the ~~department~~ director and district to construct and operate a solid waste disposal system which protects human health and the environment, and perform such other solid waste related duties as may be specified in chapter 44, title 31, Idaho Code;

(b) The ~~department~~ director shall interact and cooperate with federal agencies to secure approved state status concerning solid waste programs, administer the site selection process by requiring an owner to certify, through such professional documentation as may be required in this chapter, that the site is not encumbered by critical site limitations as set forth in section 39-7407, Idaho Code, ascertaining that such certification has been made by a qualified professional, review and ~~comment upon proposed~~ approve MSWLF unit ~~development~~ design plans, ~~review and approve~~ the ground water monitoring ~~plans--prepared--by--the owner of a MSWLF site, approve designs and ground water monitoring--plans--submitted--for review by private MSWLF owners, provide~~ program, alternative daily cover and final cover, alternative closure and post-closure care requirements recommended to the director for approval by the district, financial assurance and any other approvals required in 40 CFR 258 ~~in accordance with procedures established in this chapter~~, prepare and/or adopt ~~technical guidance and~~ such regulations as may be necessary to implement the provisions of this chapter, and cooperate in actual site monitoring and corrective action pro-

grams; and

(c) The health district shall ascertain that operations standards are met, prepare and/or adopt technical guidance, review and recommend approval of alternative operating, closure and post-closure requirements to the director, and review and enforce all aspects of operation, closure and post closure except as specified above.

(d) All approvals required by 40 CFR 258 shall be obtained by the owner and/or applicant; and all provisions of 40 CFR 258 which provide for flexibility may be obtained by the owner and/or applicant; and the director shall have the authority to grant all such approvals in accordance with the provisions of this chapter, the duty to make a determination that an application meets standards or provides an acceptable alternative, and the duty to approve or disapprove the application in a timely manner prescribed in this chapter.

(2) This chapter shall be liberally construed to allow these public entities having jurisdiction to perform their respective roles to protect human health and the environment through expeditious and technically proper solid waste management practices, while recognizing the authority of local governments to act in their governmental capacity to perform the duties prescribed in chapter 44, title 31, Idaho Code. ~~It is further the intention of the legislature that in the absence of obtaining approved state status in solid waste matters by the department, the mandatory provisions of this chapter shall be of no force and effect.~~

(3) Absent approved state status, on and after July 1, 1995, the Idaho department of health and welfare shall possess no jurisdiction over a MSWLF site owned by a political subdivision of the state, except as may be incidental to regulatory authority vested in the department by other statutes, provided further that application of such other statutes to MSWLF sites shall recognize the absolute need of society to dispose of the solid waste it generates in a cost efficient and reliable manner.

Absent approved state status on and after July 1, 1995, MSWLF owners and operators shall comply with all requirements of 40 CFR 257 and 258 as applicable.

SECTION 7. That Section 39-7407, Idaho Code, be, and the same is hereby amended to read as follows:

39-7407. LOCATION RESTRICTIONS -- SITE CERTIFICATION. (1) The following location restrictions shall apply to all new MSWLF units, existing MSWLF units, and lateral expansions. Existing sites that cannot demonstrate compliance with the following standards for airports, floodplains, or unstable areas, must close by October 9, 1996, except as otherwise provided in 40 CFR 258.16.

(2) All MSWLF units to which this chapter is applicable shall meet the following locational standards:

(a) Shall not be located proximate to an airport runway except as provided in 40 CFR 258.10;

(b) Shall not be located in areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of

plants, fish, or wildlife, or designated as critical migratory routes for protectively managed species;

(c) Shall not be located so that the active portion is ~~any closer than six hundred sixty (660) feet to the property line of adjacent land; or so that the point of compliance is not~~ closer than two hundred (200) feet to the property line of adjacent land;

(d) Shall not be located so as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance, provided that if no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the site certification shall contain an analysis of the factors outlined in section 67-6508, Idaho Code, accompanied by findings and conclusions, setting forth the reasons therefore, entered by the local government with jurisdiction after a public hearing in accord with provisions of section 67-6509, Idaho Code, that the public interest would be served by locating a solid waste landfill on the site for which certification is sought;

(e) Shall not be located so that the active portion is any closer than one thousand (1,000) feet to any state or national park, or land reserved or withdrawn for scenic or natural use;

(f) Shall not be located within ~~the course of~~ a one hundred (100) year flood ~~as defined~~ plain except as provided in 40 CFR 258.11;

(g) Shall not be located in wetlands, except as provided in 40 CFR 258.12;

(h) A MSWLF unit active portion shall not be located ~~as follows:~~

(i) within three hundred (300) feet or the distance of the point of compliance, whichever is greater, upstream of a perennial stream, or river; and

(ii) within one thousand (1,000) feet of any perennial lake or pond.

(i) A MSWLF unit active portion shall not be located where the integrity of the site would be compromised by the presence of ground water which would interfere with construction or operation of the site;

(j) A MSWLF unit shall not be located:

(i) within two hundred (200) feet of a holocene fault as defined in 40 CFR 258.13 or adjacent to geologic features which could compromise the structural integrity of the MSWLF unit; and

(ii) within seismic impact zones except as provided in 40 CFR 258.14; and

(k) A MSWLF unit active portion shall not be located on any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of an MSWLF unit without unduly threatening the integrity of the design due to inherent site instability. The provisions of 40 CFR 258.15 shall ~~serve as a guideline for such determination~~ be followed.

~~(3) Design of a MSWLF unit shall not be reviewed until site certification has been obtained.~~

SECTION 8. That Section 39-7408, Idaho Code, be, and the same is hereby amended to read as follows:

39-7408. SITE CERTIFICATION PROCEDURE. (1) It shall be the responsibility of each ~~owner of a MSWLF unit~~ applicant to obtain site certification from the ~~department~~ director. The site certification process is hereby established to ascertain compliance with the requirements of section 39-7407, Idaho Code.

(2) The site certification procedure shall be administered in the following manner:

(a) Prior to submittal of the application, the applicant may conduct a site tour for the ~~department~~ director, health district and all other public agencies with jurisdiction to familiarize the agencies with characteristics of the site and site surroundings.

(b) The applicant may then submit an application to the ~~department~~ director. The application shall address each of the criteria set forth in section 39-7407, Idaho Code, explaining the technical findings regarding each.

(c) Wherever technical evaluation of relevant information is required, a qualified professional, as ~~applicable~~ appropriate, shall certify compliance with the requisite criteria.

(d) When the application is submitted to the ~~department~~ director, the applicant shall publish legal notice of submittal of the application in the newspaper published in the county as determined by the criteria in section 31-819, Idaho Code, and shall make the application available for public inspection and copying. The date of publication of such notice shall begin a ~~fourteen (14)~~ twenty-eight (28) day comment period during which written comments concerning the application may be submitted to the ~~department~~ director.

(e) The ~~department~~ director shall act upon the application within twenty-one (21) days of the end of the comment period set forth above and shall enter a decision either certifying the site or rejecting the application. The ~~department~~ director shall review the site certification application, not ~~substituting its judgment for that of the applicant or~~ contravening the opinion of the applicant's qualified professional(s) without reliable empirical evidence that the affirmations in the application are erroneous. Upon finding that the criteria of section 39-7407, Idaho Code, have been affirmed by qualified professionals, the ~~department~~ director shall certify the site. Any rejection of a site certification application shall be accompanied by findings in writing expressly stating the criteria insufficiently documented and/or violated and the evidence relied upon in making such determination. Failure of the ~~department~~ director to act within twenty-one (21) days shall constitute site certification. ~~This certification shall be revocable at any time the department determines by substantial evidence that the proposed site violates any of the criteria set forth in section 39-7407, Idaho Code.~~ An applicant shall be provided an opportunity to appeal any denial ~~or revocation~~ of certification.

(f) Site certification is transferable with ownership of the site.

(g) Within ten (10) working days of receipt of certification from the director, the applicant shall publish notice in the newspaper provided for in subsection (d) of this section, informing the pub-

lic that certification of the site has been approved.

SECTION 9. That Section 39-7409, Idaho Code, be, and the same is hereby amended to read as follows:

39-7409. STANDARDS FOR DESIGN. (1) Applicability. These standards apply to new MSWLF units and lateral expansions of existing facilities as provided in 40 CFR 258.40.

(2) Liner designs. All owners or operators of MSWLF units shall use one (1) of the following designs:

(a) Composite liner design. A liner as provided under 40 CFR 258.40(b) and shall include a leachate collection system as provided under 40 CFR 258.40(a)(2); or

(b) ~~Amended soil liner. The liner shall be constructed of at least three (3) feet thick layer of clay or other material with a permeability of 1 X 10-7 cm/sec or less and sloped to no less than two per cent (2%), with side slopes no greater than fifty (50%) per cent. This design shall demonstrate consideration of site specific factors as provided in 40 CFR 258.40(c). This design shall include a leachate collection system as provided under 40 CFR 258.40(a)(2); or~~

~~(c) Equivalent~~ Alternate liner design. ~~This design shall use alternative methods, operating practices and locational characteristics which will minimize the migration of solid waste constituents or leachate into the ground or surface water at least as effectively as the liners as set out in paragraphs (a) and (b) of this subsection, as demonstrated by a registered professional engineer.~~ A site-specific design based upon environmental performance, as allowed under 40 CFR 258.40(a)(1) which will ensure that the concentration values listed in table 1, 40 CFR 258.40, or as amended, will not be exceeded in the uppermost aquifer at the relevant point of compliance. This design shall demonstrate consideration of site specific factors as provided in 40 CFR 258.40(c). ~~This design~~ and shall include a leachate collection system as provided under 40 CFR 258.40(a)(2); or

(~~d~~c) Arid design. A site-specific design based upon environmental performance, as allowed under 40 CFR 258.40(a)(1) which will ensure that the concentration values listed in table 1, 40 CFR 258.40, or as amended, will not be exceeded in the uppermost aquifer at the relevant point of compliance. This design shall use both field collected data and predictions that maximize contaminant migration for demonstrating no potential for migration. This design will apply to locations having less than twenty-five (25) inches of precipitation annually, net evaporative losses greater than thirty (30) inches annually, and holding capacity in native soils greater than annual absorbance; and

(i) solid waste is deposited no less than fifty (50) feet above the seasonal high level of ground water in the uppermost aquifer;

(ii) the geologic formation beneath the site and above the uppermost aquifer must have capillary capacities greater than the projected maximum volume of leachate generated during the active life of the MSWLF unit; and

(iii) "no potential for migration" is demonstrated when the geologic formation beneath the site and above the uppermost aquifer ~~must have~~ has sufficient hydrogeological characteristics and holding capacity adequate to contain all hazardous constituents generated during the active life, closure and post-closure care periods ~~as provided in 40 CFR 258.60.~~

~~(iv) This design shall demonstrate consideration of site specific factors as provided in 40 CFR 258.40(c).~~

(3) Point of compliance. For each MSWLF unit, the relevant point of compliance shall be set by a qualified professional by criteria contained in 40 CFR 258.40(d)(1) through (d)(8), inclusive, subject to approval by the director. ~~The point of compliance shall be located on land owned by the owner of the MSWLF unit and no more than one hundred fifty (150) meters downgradient from the active area, unless competent scientific evidence supports a closer location.~~

(4) Leachate discharge shall comply with permitted discharge requirements under the federal clean water act (PL 95-217) and federal storm water discharge regulations (40 CFR part 122).

SECTION 10. That Sections 39-7410 and 39-7414, Idaho Code, be, and the same are hereby repealed.

SECTION 11. That Section 39-7413, Idaho Code, be, and the same is hereby amended to read as follows:

39-7413~~0~~. GROUND WATER MONITORING DESIGN. (1) Applicability. These requirements apply to MSWLF units except as provided in 40 CFR 258.1(f), ~~as excepted in 40 CFR 258.50~~ or when suspended upon demonstration in accordance with 40 CFR 258.50 that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care periods when certified by a qualified professional ~~or as~~ and approved by the ~~department~~ director. All monitoring programs shall be conducted in a manner consistent with the guidance of relevant portions of ~~40 CFR 258,~~ appendix F per the "Federal Register" of October 9, 1991.

(2) Ground water monitoring ~~systems~~ program.

(a) A ground water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to conform with the requirements of 40 CFR 258.51(a) and (d).

(b) A multiunit ground water monitoring system may be constructed instead of separate ground water monitoring systems for each MSWLF unit as provided in 40 CFR 258.51(b).

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole as provided in 40 CFR 258.51(c). Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata, and in accordance with Idaho department of water resources, well construction standards and the monitoring well standards of the national ground water association.

(~~d~~3) Point of compliance. For each MSWLF unit, the relevant point

of compliance shall be set as a function of site and monitoring program design subject to the approval of the director. The relevant point of compliance for purposes of MSWLF unit design, well location and corrective action shall be:

(~~i~~a) located within the flow pathway(s) predicted from the results of the hydrogeologic investigation;

(~~ii~~b) no more than one hundred fifty (150) meters downgradient from the waste management unit boundary;

(~~iii~~c) on contiguous property owned, or otherwise subject to possessory rights by the MSWLF owner;

(~~iv~~d) shall be identified by the qualified professional on all reports and documents pertaining to analysis of ground water protection measures; and

(~~v~~e) determined in consideration of factors provided in 40 CFR 258.40(d).

(~~3~~4) Ground water characterization, sampling and analysis requirements.

(a) The ground water monitoring system must include sampling and analysis procedures consistent with 40 CFR 258.53.

(b) Monitoring wells shall be tested for the constituents listed in 40 CFR 258, appendix I, plus temperature, unless otherwise authorized by the ~~department~~ director as provided in 40 CFR 258.54.

(c) Background values will be based on an independent sample from each well sampled at three (3) month intervals in a one (1) year period.

(~~4~~5) Detection monitoring program.

(a) Detection monitoring is required throughout the active life and post-closure care period at MSWLF units as provided in 40 CFR 258.54 at all ground water monitoring wells as defined in 40 CFR 258.51(a)(1) and (a)(2) for constituents listed in 40 CFR 258, appendix I.

(b) Each well shall be monitored on a semiannual basis ~~during the first two (2) years of system operation~~ after background characterization. ~~For each year of operation thereafter, each well shall be monitored annually. However,~~ a~~A~~lternative constituents and sampling frequency may be approved by the ~~department~~ director based upon considerations as defined in 40 CFR 258.54 (a)(2) and (b). Requests for alternative constituents or frequency shall be based on a report certified by a qualified professional.

(c) Each ground water sample event must include a determination of the ground water surface elevation, flow direction and rate.

~~(5) Assessment monitoring program.~~

~~(a) Assessment monitoring is required whenever a contaminate is detected for one (1) or more constituents listed in 40 CFR 258, appendix I or an alternative list approved in accordance with 40 CFR 258.54(a)(2).~~

~~(b) Assessment monitoring programs shall be performed in accordance with 40 CFR 258.55.~~

~~(6) Assessment of corrective measures shall be performed in accordance with 40 CFR 258.56.~~

~~(7) Selection of remedy shall be performed in accordance with 40 CFR 258.57.~~

~~(8)--Implementation--of--corrective--action--program-shall-be-performed-in-accordance-with-40-CFR-258.58.~~

SECTION 12. That Chapter 74, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as 39-7411, Idaho Code, and to read as follows:

39-7411. DESIGN REVIEW PROCEDURE. (1) Design of a MSWLF unit shall not be reviewed until site certification has been obtained. After obtaining site certification, an applicant shall produce design plans and specifications which comply with the design standards set forth in sections 39-7409 and 39-7410, Idaho Code. The responsibility for complying with said standards shall rest solely with the applicant of the site.

(2) An applicant may notify the director of its intent to initiate a MSWLF site design and meet with the director to discuss standards, schedule, design process to be used and particular concerns of the director.

(3) The applicant shall conduct aerial and cadastral surveys, relevant studies, and prepare a hydrogeologic report which will satisfy standards and other provisions in accordance with this chapter and applicable state regulations. Specific climatic data and verification of location restrictions shall be included.

(4) The applicant shall submit findings and a tentative design plan, including preliminary schematic design of environmental monitoring systems to the director as a result of the preliminary design investigation. The submittal initiates a twenty-eight (28) day period for department review and comment. Concurrent with the submittal to the director, the applicant shall publish notice in a newspaper of general circulation, as determined by the criteria in section 31-819, Idaho Code, in the county wherein the MSWLF would be located notifying the public that a preliminary design plan has been submitted to the director and is available for public review. The date of publication initiates a twenty-eight (28) day period for department review and public comment. Written public comments concerning the proposed design plan shall be compiled by the director. The compiled public comments received by the director and those generated by the director shall be transmitted to the owner, and the applicant if other than the owner, no more than thirty-five (35) days after the date of publication of the notice or seven (7) days after the end of the public comment period, whichever is later.

(5) When a response is received from the director, the applicant may submit the facility design, ground water monitoring program, and specifications, in a final design report which addresses standards established by this chapter, applicable federal regulations and other relevant provisions of state law. Said submittal shall include a site-specific analysis of hydrogeologic conditions, location restrictions and other factors relevant to long-term site integrity, and shall address comments from the public and the director related to objective standards in the final design report. Said submittal shall be prepared by a qualified professional in a manner consistent with sound professional practices. The submittal of this final design report initiates a fifty-six (56) day period for the director's review.

(6) Concurrent with submittal to the director, the applicant shall release the final design report, including all supporting reports, plans and documentation, to the extent practicable, for public comment by placing it for inspection at every public library within the county where the proposed MSWLF would be located. Copies of the submittal shall be made available for possession, at the cost of duplication, at a public location in the county seat of the county where the proposed MSWLF unit would be located. The applicant shall publish notice in a newspaper of general circulation, as determined by the criteria in section 31-819, Idaho Code, in the county wherein the MSWLF would be located notifying the public that a final design report has been submitted to the director and is available for public review. Public comments shall be submitted, in writing, to the director within twenty-eight (28) days of the date of publication.

(7) No more than fifty-six (56) days after publication of notice of submittal, or twenty-eight (28) days after the close of an advertised public comment period, whichever is later, the director shall enter a decision either approving or disapproving the final design. The decision shall be in writing and shall make one (1) of the following findings:

(a) Based upon the information submitted, design complies with applicable standards.

(b) Based upon the information submitted, the design does not comply with applicable standards, setting forth with specificity the material standards not met or insufficiently documented.

(c) Failure to comport with professional standards.

Failure of the director to respond to an applicant's request for approval in the manner provided herein shall constitute approval of the request. Construction shall not be initiated on a MSWLF unit until approval has been granted, except that construction prior to approval may be initiated prior to July 1, 1993, for a MSWLF unit which meets the design standard of section 39-7409(2)(a), Idaho Code. The applicant shall publish notice of approval in a newspaper of general circulation when affirmative or defacto approval is given.

(8) Upon entering a decision of disapproval, an automatic twenty-one (21) day stay of proceedings shall occur unless waived by the applicant. During the twenty-one (21) day stay, the director and the applicant may meet and confer to attempt to reconcile differences. At any point during that twenty-one (21) day period the director and applicant can reach an accord and approval can be granted, with construction authorized at that point. The applicant can tender a written waiver of this twenty-one (21) day reconciliation period which would initiate the requirement provided for in subsection (9) of this section. At any time in the review process or post-decision reconciliation process the applicant and director may mutually agree to extend the timeframes contained herein and may resort to mediation, arbitration, or binding arbitration to resolve differences as they mutually see fit.

(9) If differences are not reconciled in the period set forth in subsection (8) of this section, the director shall notify the owner that the design remains disapproved. Said notice of disapproval shall incorporate the rationale for disapproval contained in the original decision of disapproval, deleting any issues resolved in the post-

decision reconciliation period.

(10) Following final action by the director the applicant may file a petition with the district court, with concurrent notice to the director, in the county where the proposed MSWLF would be located for expedited appellate review of the director's decision. The petition shall set forth the specific basis for the appeal and shall identify the legal and factual basis for contesting the disapproval by the director. The director shall submit a copy of the entire record upon which its disapproval has been based no more than fourteen (14) days after the date the applicant's petition for review has been filed. Only information which has been available during the design review process may be used in the judicial review process.

(11) All issues claimed as a basis of appeal by the applicant shall be addressed in a memorandum filed with the petition appealing disapproval by the director. The director shall submit a reply memorandum no later than fourteen (14) days after the applicant's petition for review has been filed.

(12) Upon the record, the applicable law, the memoranda of the respective parties, and such independent technical assistance as the court may find it necessary and appropriate to retain, the court shall evaluate the applicant's petition and the decision by the director and shall render a decision no more than twenty-one (21) days after the completed record, and accompanying memorandum, if one is filed, are submitted to the court by the director. The court shall sustain the director's disapproval action if it affirmatively finds that the record contains substantial evidence that the design does not comply with standards as specified pursuant to section 39-7412(7)(b) or (c), Idaho Code. If the court finds the disapproval is not supported by substantial evidence in the record, it shall reverse the director's action and remand the matter to the director with appropriate instructions.

(13) The procedure set forth in subsections (10) through (12) of this section are effective until January 1, 1994. On and after January 1, 1994, the applicant is entitled to judicial review pursuant to chapter 67, title 52, Idaho Code. Upon waiver or expiration of the twenty-one (21) day reconciliation period, the director and the applicant shall stipulate to accelerated judicial review pursuant to court approval where the ordinary review period provided in chapter 67, title 52, Idaho Code, may reasonably result in substantial increased costs to the applicant, potential violations of federal or state environmental laws or threats to the public health and environment.

SECTION 13. That Section 39-7411, Idaho Code, be, and the same is hereby amended to read as follows:

39-741~~1~~2. STANDARDS FOR OPERATION. Owners or operators of all MSWLF units shall:

(1) Implement a program for detecting and preventing disposal of regulated hazardous wastes as provided in 40 CFR 258.20;

(2) Provide for daily cover as provided in 40 CFR 258.21. Alternative materials or cover frequency other than daily cover may be used only as specified by the MSWLF plan of operation;

(3) Provide disease vector control as provided in 40 CFR 258.22;

(4) Implement a program of routine methane monitoring and control as provided in 40 CFR 258.23;

(5) Ensure that MSWLF units do not violate any ambient air quality standard or emission standard from any emission of landfill gases, combustion or any other emission associated with a MSWLF unit as ~~defined~~ provided in 40 CFR 258.24;

(6) Provide and control access as ~~defined~~ provided in 40 CFR 258.25;

(7) Design, construct and maintain a run-on/run-off control system as provided in 40 CFR 258.26 to:

(a) Prevent all the run-on of surface waters and other liquids resulting from a maximum flow of a twenty-five (25) year~~,-one-(1) hour~~ storm, or snowmelt~~,-whichever-is--greater,~~ into the active portion of the MSWLF unit;

(b) Control the collection of the run-off of surface waters and other liquids resulting from a twenty-four (24) hour, twenty-five (25) year storm, or snowmelt, whichever is greater, from the active portion and the closed portions of a MSWLF unit; and

(c) Prevent the discharge of pollutants into waters of the United States and the state of Idaho as defined in 40 CFR 258.27;

(8) Prohibit the disposal of noncontainerized liquids or sludges containing free liquids in MSWLF units except as provided in 40 CFR 258.28;

(9) Establish an operating and recordkeeping procedure as provided in 40 CFR 258.29; and

(10) Comply with operating procedures established by the board for implementation by the districts which are intended to assure operations which protect the public health and maintain the integrity of the landfill design.

(11) MSWLF units that dispose of greater than twenty (20) tons per day of municipal solid waste based on an annual average shall:

(a) Monitor daily climatic conditions. Monitoring shall include precipitation including snow, evaporation, evaporative water temperature, air temperature, wind speed and direction; and

(b) Weigh all incoming waste or provide an equivalent method of measuring waste tonnage capable of estimating total annual solid waste tonnage.

SECTION 14. That Section 39-7412, Idaho Code, be, and the same is hereby amended to read as follows:

39-741~~2~~3. OPERATIONS PLAN REVIEW. (1) Prior to operation of a MSWLF unit, an ~~proposed~~ operations plan shall be submitted to the health district with jurisdiction. It shall be the responsibility of each ~~owner~~ applicant of a MSWLF unit to certify to the health district that the provisions of section 39-7411, Idaho Code, have been complied with through development of an operating plan. No solid waste disposal facility shall accept waste without a current operating certificate from the health district with jurisdiction.

(2) The health district shall review operational plans in the same manner as the ~~department~~ director reviews requests for site certification pursuant to section 39-7408, Idaho Code. An applicant shall provide information in the operations plan in sufficient detail to

show compliance with the provisions of section 39-7~~211~~412, Idaho Code, and required procedures adopted pursuant thereto. The same standards of review shall apply to an operations plan as apply to the site certification process. The health district shall accept certification by a qualified professional that standards of operation have been met upon presentation of the professional's certification of compliance and presentation of a written explanation of operational practices which will be undertaken to meet standards established in section 39-741~~1~~2, Idaho Code.

(3) If an operations plan provides for alternative operating criteria requiring approval by the director as provided in 40 CFR 258, the health district shall make a decision recommending approval or disapproval. Such plan shall be submitted by the health district to the director for his review. The submittal shall be accompanied by findings of fact and the recommendation from the health district.

(4) The director shall review the recommendation submitted by the health districts and shall make a decision to approve or disapprove. The director shall review recommendations for approval using the same standards of review provided in section 39-7408(e), Idaho Code.

SECTION 15. That Chapter 74, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as 39-7414, Idaho Code, and to read as follows:

39-7414. ASSESSMENT MONITORING AND CORRECTIVE ACTION. (1) Applicability. These standards apply whenever a statistically significant increase over background has been detected for one (1) or more constituents listed in 40 CFR 258, appendix I or an alternative list approved in accordance with 40 CFR 258.54(a)(2).

(2) Assessment monitoring programs shall be performed in accordance with 40 CFR 258.55.

(3) Assessment of corrective measures shall be performed in accordance with 40 CFR 258.56.

(4) Selection of remedy shall be performed in accordance with 40 CFR 258.57.

(5) Implementation of corrective action program shall be performed in accordance with 40 CFR 258.58.

SECTION 16. That Section 39-7415, Idaho Code, be, and the same is hereby amended to read as follows:

39-7415. STANDARDS FOR CLOSURE. (1) Applicability. These standards apply to all MSWLF units that receive wastes on or after October 9, 1993. MSWLF units that accept waste after October 9, 1991, but cease to accept waste prior to October 9, 1993, shall at a minimum comply with subsections (2)(a) and (3) of this section in addition to the "sanitary landfill closure guidance" criteria as adopted by the health district.

(2) Cover designs. Owners or operators of MSWLF units shall install one (1) of the following final cover systems:

(a) A cover as provided under 40 CFR 258.60(a); or

(b) The cover material must be fine-grained with intrinsic permeability no greater than 1 X 10-3 cm/sec and a minimum thickness of

twenty-four (24) inches; and

(i) have capillary holding capacity greater than the projected maximum accumulated volume of water as determined by utilization of accepted water balance methodology based on local or regional twenty-five (25) year climatic records;

(ii) annual precipitation is less than twenty-five (25) inches with net evaporative losses greater than thirty (30) inches annually;

(iii) the top six (6) inches of the cover shall be capable of sustaining shallow rooted native plant growth; and

(iv) this design shall demonstrate consideration of site specific factors as provided in 40 CFR 258.60~~(2)~~(b) or:

(c) As provided in 40 CFR 258.60(b).

(3) The final grade of slopes shall be greater than two per cent (2%) unless otherwise supported by the post closure plan and uses approved by the health district, and the grade of side slopes not more than thirty-three per cent (33%).

(4) Closure plan preparation, placement in operating record, notice of intent to close, time requirements for commencement and completion of closure activities, certification, deed notation and removal of deed notation shall be conducted as provided in 40 CFR 258.60(c) through (j), inclusive.

SECTION 17. That Section 39-7416, Idaho Code, be, and the same is hereby amended to read as follows:

39-7416. STANDARDS FOR POST CLOSURE CARE. (1) Applicability. Post closure maintenance standards apply to all MSWLF units that receive wastes on or after October 9, 1993.

(2) Post closure care shall be conducted as provided under 40 CFR 258.61.

SECTION 18. That Section 39-7417, Idaho Code, be, and the same is hereby amended to read as follows:

39-7417. FINANCIAL ASSURANCE FOR CLOSURE, POST CLOSURE CARE AND CORRECTIVE ACTION. (1) Applicability. These requirements shall apply to new MSWLF units, existing MSWLF units and lateral expansions except as exempted in 40 CFR 258.1~~(f)(1)~~(d) and 258.70(a).

(2) The requirements of this section are effective April 9, 1994, or at such later date upon subsequent amendment of 40 CFR 258.70.

(3) All MSWLF units shall be underwritten by financial assurance provisions as provided by the following:

(a) Closure as ~~defined~~ provided in 40 CFR 258.71;

(b) Post closure care as ~~defined~~ provided in 40 CFR 258.72; and

(c) Corrective action as ~~defined~~ provided in 40 CFR 258.73.

(4) The financial assurance mechanisms provided for MSWLF units shall include any mechanism or a combination of mechanisms meeting the criteria of 40 CFR 258.74.

(5) Counties may use available borrowing capability through registered warrants for a prearranged amount and preapproved by a lending institution as a financial mechanism to assure assessment monitoring and corrective action needs.

(6) Subdivisions of the state may use any method provided by law to meet the requirements of this section.

(7) MSWLF units owned or operated by subdivisions of the state that qualify under 40 CFR 258.74(f) may include any mechanism allowed to them upon adoption and publication.

(8) Financial assurance funds for MSWLF units not located on federal or state lands shall be deposited in a county trust fund in the county in which the MSWLF unit is located. The county shall act as the trustee for the trust funds, and as named coprincipal for surety bonds, letters of credit, and insurance. As trustee, the county may require an independent audit of the adequacy of the financial assurance but shall not become liable for financial assurance except in the case of default as otherwise defined by federal and state law.

SECTION 19. That Section 39-7418, Idaho Code, be, and the same is hereby amended to read as follows:

39-7418. MODIFICATIONS TO SITES APPROVED UNDER THIS CHAPTER. (1) The following classes of modifications to approved sites shall require that an owner or operator amend the approved design~~, development,~~ or ground water monitoring ~~plan~~ program:

(a) Lateral expansion outside the approved waste management unit boundary design;

(b) Unpredictable change affecting any environmental monitoring ~~system~~ program;

(c) Change of liner design; or

(d) A modification of the design or operation due to initiation of corrective action and remediation.

(2) The scope of new investigations and plan amendment shall be defined by the owner, ~~department~~ director and health district before any modification to the decision is begun. Only those stages of the applicable approval process affected by the request for modification shall be required.

SECTION 20. That Section 39-7419, Idaho Code, be, and the same is hereby amended to read as follows:

39-7419. INSPECTIONS. (1) All MSWLF units shall be subject to routine inspection by the county, ~~department~~ director and health district in accordance with relevant provisions of the Idaho Code.

(2) At intervals of not less than three (3) years, nor more than five (5) years, the owner, county, ~~department~~ director and health district shall jointly conduct a comprehensive review of the MSWLF unit for provisions contained in this chapter, technical guidance, other provisions, and the plan for design and operation, as amended. A record of the review shall be placed in the operating record of the MSWLF unit which shall be maintained by the owner and the health district with jurisdiction. Operating procedures shall be recertified at intervals of no more than three (3) years.

SECTION 21. That Section 39-7420, Idaho Code, be, and the same is hereby amended to read as follows:

39-7420. VIOLATIONS AND ENFORCEMENT. (1) Failure to comply with the requirements established in this chapter, requirements of rules established pursuant to this chapter, and reasonable conditions of approval granted pursuant to this chapter shall be unlawful. Particularly with respect to siting and operation of a municipal solid waste landfill to satisfy the requirements of chapter 44, title 31, Idaho Code, enforcement should focus upon remediation of deficiencies, rather than punishment. Penalties should be imposed where practices show disregard for protection of human health, safety and the environment.

(2) Each public agency with responsibility for enforcement of requirements established in this chapter may inspect, monitor and employ such methods of enforcement as they may be empowered to use by statute or local ordinance.

(a) The ~~department~~ director may apply the provisions of section 39-108, Idaho Code, to ~~any--violation--of--solid--waste--statutes, rules-or-regulations~~ insure compliance.

(b) The respective health districts or the several counties may employ the use of negotiated compliance agreements in addition to civil legal remedies and misdemeanor criminal penalties otherwise authorized in order to obtain compliance with requirements established herein.

~~(c)--The--entity-with-authority-to-enforce-the-requirements-established-herein-shall-be-empowered,-to-the-extent-allowed-by-federal law-to-implement-use-of-funds-maintained-or-set-aside--to--monitor environmental--conditions,--to-remedy-environmental-impairment,-or to-take-such-other-actions-as-may-be-necessary--to--control--funds maintained-to-protect-the-environment-or-remedy-material-deficiencies.~~

(3) Where more than one (1) public entity undertakes enforcement efforts to obtain compliance with the provisions of this chapter, enforcement efforts should be coordinated to the greatest extent possible to minimize conflict among requirements and costs of compliance.

(4) A private right of action in behalf of any person who has been injured or damaged by any approval authorized in this chapter or violation of the terms of any approval or regulation authorized in this chapter may be maintained in accordance with the provisions of this chapter and/or the provisions of chapter 52, title 67, Idaho Code, as applicable.

(5) If a district fails to carry out responsibilities established in this chapter, the director may assume the authority otherwise to be implemented by a district.

SECTION 22. That Section 39-105, Idaho Code, be, and the same is hereby amended to read as follows:

39-105. POWERS AND DUTIES OF THE DIRECTOR. The director shall have the following powers and duties:

1. All of the powers and duties of the department of public health, the department of health, the board of health, and the air pollution control commission, are hereby transferred to the director of the department of health and welfare, provided, however, that rule making and hearing functions relating to environmental protection,

public health and licensure and certification standards shall be vested in the board of health and welfare. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law, including the authority to adopt, promulgate, and enforce rules and regulations in those circumstances when the authority to adopt, promulgate, and enforce such rules and regulations is not vested in the board of health and welfare, and shall be the successor in law to all contractual obligations entered into by his predecessor in law. All rule making proceedings and hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

2. The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules, regulations, codes and standards, as may be necessary to deal with problems related to personal health, water pollution, air pollution, visual pollution, noise abatement, solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to the prevention, control or abatement of environmental pollution or degradation and the maintenance and protection of personal health. Any such regulation or standard may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

3. The director, under the rules, regulations, codes or standards adopted by the board, shall have the general supervision of the promotion and protection of the life, health, mental health and environment of the people of this state. The powers and duties of the director shall include but not be limited to the following:

a. The issuance of licenses and permits as prescribed by law and by the rules and regulations of the board.

b. The supervision and administration of laboratories and the supervision and administration of standards of tests for environmental pollution, chemical analyses and communicable diseases. The director may require that laboratories operated by any city, county, institution, person, firm or corporation for health or environmental purposes conform to standards set by the board.

c. The supervision and administration of a mental health program, which shall include services for the evaluation, screening, custody and treatment of the mentally ill and those persons suffering from a mental defect, or mental defects.

d. The enforcement of minimum standards of health, safety and sanitation for all public swimming pools within the state.

e. The enforcement of standards, rules and regulations, relating to public water supplies.

f. The supervision and administration of the various schools, hospitals and institutions that were the responsibility of the board of health at the time this act went into effect.

g. The supervision and administration of services dealing with the problems of alcoholism, including but not limited to the care and rehabilitation of persons suffering from alcoholism.

h. The establishment of liaison with other governmental depart-

ments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of environmental and health problems. All of the rules, regulations and standards adopted by the board shall apply to state institutions.

i. The supervision and administration of an emergency medical service program, including but not limited to assisting other governmental agencies and local governmental units, in providing first aid emergency medical services and for transportation of the sick and injured.

j. The supervision and administration of a system to safeguard air quality and for limiting and controlling the emission of air contaminants.

k. The supervision and administration of a system to safeguard the quality of the waters of this state, including but not limited to the enforcement of standards relating to the discharge of effluent into the waters of this state and the storage, handling and transportation of solids, liquids, and gases which may cause or contribute to water pollution.

l. The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of environmental and health problems.

m. The administration of solid waste disposal site and ~~development~~ design review in accordance with the provisions of chapter 74, title 39, Idaho Code, and chapter 4, title 39, Idaho Code, and in particular as follows:

i. The issuance of a solid waste disposal site certificate in the manner provided in chapter 74, title 39, Idaho Code.

ii. Provide review and ~~comment~~ approval regarding the design of solid waste disposal facilities and ground water monitoring systems and approval of all applications for flexible standards as provided in 40 CFR 258, in accordance with the provisions of chapter 74, title 39, Idaho Code.

iii. ~~Approving--ground-water-monitoring-methods-and-implementation-associated-with-development--and--operation--of--solid waste--disposal-sites-pursuant-to-chapter-74,-title-39,-Idaho Code;~~

~~iv.~~ Cooperating and coordinating with operational monitoring of solid waste disposal sites by district health departments pursuant to authority established in chapters 4 and 74, title 39, Idaho Code.

iv. The authority granted to the director pursuant to provisions of this subsection shall ~~not~~ be effective ~~unless-and until~~ upon enactment of chapter 74, title 39, Idaho Code, by the legislature. If the state of Idaho has not obtained approved state status from the United States environmental protection agency (USEPA) relative to chapter 74, title 39, Idaho Code, this subsection m. shall be of no force and effect effective July 1, 1995. ~~Prior-to-said-approval,-or-in the-event-of-revocation-of-approved-state-status,-the--provisions--of--the--solid--waste-facilities-act-shall-be-null-and void;~~

vi. The authority to develop and propose regulations as necessary to supplement details of compliance with the solid waste facilities act and applicable federal regulations, provided that such regulations shall not conflict with the provisions of this act nor shall such regulations be more strict than the requirements established in federal law or in the solid waste facilities act.

~~vii.--When--reviewing-the-phases-of-solid-waste-disposal-site development-referred-to-herein-the-following-standards--shall apply-to-the-review-process:~~

~~A.--For--site--certification--the--director-shall-accept applicant-representations-if-accompanied--by--certification--from--a-licensed-professional-engineer-or-licensed geologist,-as-appropriate,-with-respect-to-the--particular--aspect--of-compliance-certified.-Absent-substantial evidence-of-errors--in--the--professional--certification submitted--by--the--owner,--a--site-certificate-shall-be issued.~~

~~B.--For-design-review-of-a-solid-waste-disposal-facility the-director-shall-review-the-design-documents-submitted by--the--owner's--licensed--professional---engineer---or licensed--geologist,-as-appropriate,-and-return-comments to-the-owner-within-the-specified-period-established--in chapter-74,-title-39,-Idaho-Code.-The-director's-authority-shall-be-limited-to-review-and-comment-in-the-design phase--of-disposal-site-development,-unless-the-director finds,-upon-substantial-evidence,-that--construction--of the--submitted-design-would-imperil-public-health-or-the environment.--In--such--circumstance,--the--director--is empowered-to-issue-a-fourteen--(14)--day--administrative stay--prohibiting--construction--of--the--proposed-solid waste-disposal-site--and--to--initiate--equitable--legal action--in--the-district-court-in-the-county-wherein-the facility-is-located-to-prohibit-construction--until--the potential-peril-is-remedied.~~

~~C.--For--review-of-plans-of-a-ground-water-quality-monitoring-system-the-director-shall--approve--the--proposed ground-water-monitoring-system-if-a-preponderance-of-the evidence--supports--the-conclusion-that-it-will-meet-the monitoring-requirements-established--by--the--USEPA--and chapter--74,--title-39,-Idaho-Code.-Only-by-the-presence of-substantial-evidence-that-the--ground--water--quality monitoring-system-will-not-function-appropriately,-which evidence-shall-be-affirmatively-identified-by-the-director,--shall--a-ground-water-quality-monitoring-system-be disapproved.-The-director-shall-set-forth--in--any--such notice-of-disapproval-the-steps-an-applicant-can-take-to obtain-approval.~~

n. The enforcement of all laws, rules, regulations, codes and standards relating to environmental protection and health.

o. The formulation and adoption of a comprehensive state nutrient management plan for the surface waters of the state of Idaho in consultation with the appropriate state or federal agencies, local

units of government, and with public involvement as provided for under the administrative procedure act. The director shall recommend by March 1, 1990, to the board for adoption, rules and regulations setting forth procedures for development of the plan, including mechanisms to keep the public informed and encourage public participation in plan development.

The plan shall be developed on a hydrologic basin unit basis with a lake system emphasis. The panhandle hydrologic basin plan shall be completed no later than July 1, 1995. The remaining basin plans shall be completed no later than January 1, 1995. Each plan shall identify nutrient sources; the dynamics of nutrient removal, use, and dispersal; and preventative or remedial actions where feasible and necessary to protect the surface waters of the state. The director shall formulate and recommend to the board for adoption rules and regulations as necessary to implement the plan. The plan shall be used by the department and other appropriate agencies including soil conservation districts, public health districts and local units of government in developing programs for nutrient management. State and local units of government shall exercise their police powers in compliance with the comprehensive state nutrient management plan of this act. Local nutrient management programs adopted by any local unit of government prior to the completion of the state comprehensive nutrient management plan or a hydrologic basin plan shall be consistent with the criteria for inclusion in the comprehensive state nutrient management plan as enumerated in this subsection, as evidenced by findings of fact by the local units of government and confirmed by the division of environmental quality and the local health district board. The director shall recommend by March 1, 1990, to the board for adoption, rules and regulations for procedures to determine consistency.

p. The formulation of a water quality management plan for Priest lake in conjunction with a planning team from the Priest lake area whose membership shall be appointed by the board and consist of a fair representation of the various land managers, and user and interest groups of the lake and its Idaho watershed. The stated goal of the plan shall be to maintain the existing water quality of Priest lake while continuing existing nonpoint source activities in the watershed and providing for project specific best management practices when necessary. The plan shall include comprehensive characterization of lake water quality through completion of a baseline monitoring program to be conducted by the department and shall consider existing economics and nonpoint source activity dependent industries of the Priest lake area. The planning team shall conduct public hearings and encourage public participation in plan development including opportunity for public review and input. Technical assistance to the planning team, with state nonpoint source management programs in forest practices, road construction and maintenance, agriculture and mining shall be provided by the department. Technical assistance to the planning team on area planning, zoning and sanitary regulations shall be provided by the clean lakes council. The plan shall be submitted to the board for its approval at the end of a three (3) year plan

development period. Upon review and acceptance by the board, the plan shall be submitted to the legislature for amendment, adoption or rejection. If adopted by the legislature, the plan shall be enacted by passage of a statute at the regular legislative session when it receives the plan and shall have the force and effect of law. Existing forest practices, agricultural and mining nonpoint source management programs are considered to be adequate to protect water quality during the plan development period.

4. The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government, including but not limited to the federal water pollution control act, for use in or by the state of Idaho in relation to health and environmental protection.

5. The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporation for facilities, land, and equipment when such use will have a beneficial, recreational, or therapeutic effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money for the purposes delineated in such contracts.

6. The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

SECTION 23. That Section 39-414, Idaho Code, be, and the same is hereby amended to read as follows:

39-414. POWERS AND DUTIES OF DISTRICT BOARD. The district board of health shall have and may exercise the following powers and duties:

(1) To administer and enforce all state and district health laws, regulations, and standards.

(2) To do all things required for the preservation and protection of the public health and preventive health, and such other things delegated by the director of the state department of health and welfare and this shall be authority for the director to so delegate.

(3) To determine the location of its main office and to determine the location, if any, of branch offices.

(4) To enter into contracts with any other governmental or public agency whereby the district board agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received and shall not apply to services required by statute, rule, and regulations, or standards promulgated pursuant to this act or chapter 1, title 39, Idaho Code.

(5) All moneys or payment received or collected by gift, grant,

devise, or any other way shall be deposited to the respective division or subaccount of the public health district in the public health district account authorized by section 39-422, Idaho Code.

(6) To establish a fiscal control policy required by the state auditor.

(7) To cooperate with the state board and the department of health and welfare.

(8) To enter into contracts with other governmental agencies, and this act hereby authorizes such other agencies to enter into contracts with the health district, as may be deemed necessary to fulfill the duties imposed upon the district in providing for the health of the citizens within the district.

(9) To purchase, exchange or sell real property and construct, rent, or lease such buildings as may be required for the accomplishment of the duties imposed upon the district and to further obtain such other personal property as may be necessary to its functions.

(10) To accept, receive and utilize any gifts, grants, or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this act.

(11) To establish a charge whereby the board agrees to render services to or for entities other than governmental or public agencies for an amount reasonably calculated to cover the cost of rendering such service.

(12) To enter into a lease of real or personal property as lessor or lessee, or other transaction with the Idaho health facilities authority for a term not to exceed ninety-nine (99) years upon a determination by the district board that the real or personal property to be leased is necessary for the purposes of the district, and to pledge nontax revenues of the district to secure the district's obligations under such leases.

(13) To administer and certify solid waste disposal site operations, closure, and post closure procedures established by statute or regulation in accordance with provisions of chapter 74, title 39, Idaho Code, in a manner equivalent to the site certification process set forth in section 39-~~105(m)(vi)(A)~~7408, Idaho Code.

SECTION 24. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

SECTION 25. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 140
(H.B. No. 334)

AN ACT
RELATING TO THE CLASSIFICATION AND RETENTION OF COUNTY RECORDS;

REPEALING SECTION 31-871, IDAHO CODE; AMENDING CHAPTER 8, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-871, IDAHO CODE, TO PROVIDE FOR THE CLASSIFICATION AND RETENTION OF COUNTY RECORDS; AND AMENDING SECTION 31-709, IDAHO CODE, TO PROVIDE THAT CERTAIN BOOKS MUST BE KEPT PERMANENTLY AND INDEFINITELY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 31-871, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 8, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-871, Idaho Code, and to read as follows:

31-871. CLASSIFICATION AND RETENTION OF RECORDS. (1) County records shall be classified as follows:

(a) "Permanent records" shall consist of, but not be limited to, the following: proceedings of the governing body, ordinances, resolutions, building plans and specifications, bond register, warrant register, budget records, general ledger, cash books and records affecting the title to real property or liens thereon, and other documents or records as may be deemed of permanent nature by the board of county commissioners.

(b) "Semipermanent records" shall consist of, but not be limited to, the following: claims, contracts, canceled checks, warrants, duplicate warrants, license applications, building applications, departmental reports, purchase orders, vouchers, duplicate receipts, bonds and coupons, registration and other election records, financial records, and other documents or records as may be deemed of semipermanent nature by the board of county commissioners.

(c) "Temporary records" shall consist of, but not be limited to, the following: correspondence not related to subsections (1) and (2) of this section, cash receipts subject to audit, and other records as may be deemed temporary by the board of county commissioners.

(d) Those records not included in subsection (1)(a), (b) or (c) of this section shall be classified as permanent, semipermanent or temporary by the board of county commissioners and upon the advice of the office of the prosecuting attorney.

(2) County records shall be retained as follows:

(a) Permanent records shall be retained for not less than ten (10) years.

(b) Semipermanent records shall be kept for not less than five (5) years after date of issuance or completion of the matter contained within the record.

(c) Temporary records shall be retained for not less than two (2) years.

(d) Records may only be destroyed by resolution of the board of county commissioners after regular audit and upon the advice of the prosecuting attorney. A resolution ordering destruction must

list, in detail, records to be destroyed. Such disposition shall be under the direction and supervision of the board's clerk.

(e) The provisions of this section shall control the classification and retention schedules of all county records unless otherwise provided in Idaho Code or any applicable federal law.

SECTION 3. That Section 31-709, Idaho Code, be and the same is hereby amended to read as follows:

31-709. BOOKS TO BE KEPT. The board must cause to be kept permanently and indefinitely, in accordance with the provisions of sections 9-331 and 9-332, Idaho Code:

1. A minute book, in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.

2. An allowance book, in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering and indexing the same through each year.

3. A road book, containing all proceedings and adjudications relating to the establishment, maintenance, change and discontinuance of roads, road districts, and overseers thereof, their reports and accounts.

4. A franchise book, containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required.

5. A warrant book, to be kept by the county auditor, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

6. An ordinance book, containing all ordinances, stating the date enacted.

7. A resolutions book, containing all resolutions, stating the date adopted.

Approved March 25, 1993.

CHAPTER 141
(H.B. No. 360)

AN ACT

RELATING TO THE HEALTH PROFESSION LOAN REPAYMENT PROGRAM; AMENDING SECTION 39-5902, IDAHO CODE, TO PROVIDE FOR SELECTION OF LICENSED PHYSICIANS, NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS NOT PRACTICING IN THE STATE OF IDAHO AT THE BEGINNING OF EACH STATE FISCAL YEAR TO PARTICIPATE IN THE LOAN REPAYMENT PROGRAM; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-5902, Idaho Code, be, and the same is

hereby amended to read as follows:

39-5902. HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM. (1) The department shall develop a loan repayment program for licensed primary care physicians, nurse practitioners, and physician assistants willing to practice in primary care shortage areas.

(2) The health professional loan repayment program is established for licensed primary care physicians, nurse practitioners, and physician assistants serving in primary care shortage areas. The program shall be administered by the department. In administering this program, the department shall have the following duties:

(a) It shall select licensed physicians, nurse practitioners, and physician assistants not practicing in the state of Idaho at the ~~time of application~~ beginning of each state fiscal year to participate in the loan repayment program giving preference to Idaho residents. For purposes of this chapter, those in a residency program in Idaho are not considered practicing in Idaho and may apply for the program;

(b) It shall designate the specific areas of service;

(c) It shall promulgate rules and regulations to administer the program; and

(d) It shall publicize the program.

(3) The department may grant loan repayment awards to eligible participants from the funds appropriated for such purposes from the general account. The amount of the loan repayment shall not exceed twenty thousand dollars ($20,000) per year for a maximum of four (4) years. The department may establish awards of less than twenty thousand dollars ($20,000) per year based upon reasonable levels of expenditures for each of the health professionals covered under this chapter.

(4) Participants in the loan repayment program shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which leads to licensure as a primary care physician, nurse practitioner, or physician assistant in the state of Idaho.

(a) Participants shall agree to serve at least two (2) years in a designated primary care shortage area;

(b) Repayment shall be limited to reasonable educational expenses as determined by the department and shall include principal and interest;

(c) Loans from both government and private lending institutions may be repaid by the program. Participants shall agree to allow the department or its staff access to loan records and to acquire information from lenders necessary to verify eligibility and to make the required loan payments on a timely basis;

(d) Repayment of loans established pursuant to this program shall begin no later than ninety (90) days after the individual has become a participant. Payments shall be made quarterly, or more frequently if deemed appropriate by the department, to the lending institution until the loan is repaid or the participant becomes ineligible due to discontinued service in a primary care shortage area or after the fourth year of services when eligibility discontinues, whichever comes first;

(e) Should the participant discontinue services in a primary care shortage area, payments against the loans of the participant shall cease to be effective on the date that the participant discontinues service;
(f) Except for circumstances beyond their control, participants who serve less than two (2) years shall be obligated to repay to the program the sum of the total of the amounts the program paid for loan repayment plus an unserved obligation penalty rate as determined in section 28-22-104(2), Idaho Code, assessed on the amount paid by the program on behalf of the participant;
(g) Any amount which the program is entitled to recover due to the breach of a program contract must be paid within one (1) year from the day of breach;
(h) The department is responsible for the collection of payments made on behalf of participants from the participants who discontinue service before completing their two (2) year obligation. The department shall exercise due diligence in such collection, maintaining all necessary records to ensure that the maximum amount of payment made on behalf of the participant is recovered. Collection under this section shall be pursued using the full extent of the law, including wage garnishment if necessary;
(i) The department shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires;
(j) The legislature recognizes the need for a medical practice to be financially viable, but, to the extent reasonably possible, and within such financial constraints, while participating in the loan repayment program, the physician shall provide medical services to medicare, medicaid and medically indigent patients, and such services shall be consistent with services provided to all other patients within his practice.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 142
(H.B. No. 388)

AN ACT

RELATING TO HIGHWAYS AND FEDERAL LAND RIGHTS OF WAY; EXPRESSING LEGISLATIVE INTENT; AMENDING SECTION 40-107, IDAHO CODE, TO DEFINE FEDERAL LAND RIGHTS OF WAY; AMENDING CHAPTER 2, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-204A, IDAHO CODE, TO PROVIDE FOR DOCUMENTATION, ABANDONMENT, USE, VALIDATION AND ACKNOWLEDGEMENT OF FEDERAL LAND RIGHTS OF WAY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. STATEMENT OF LEGISLATIVE INTENT. The State of Idaho recognizes that existing federal land rights of way are extremely important to all of Idaho's citizens. Two-thirds of Idaho's land is under control of the federal government and access to such federal lands is integral to public use. The Idaho State Legislature recognizes the necessity for establishing a procedure for identifying and confirming the existence of previously established federal rights of way, to protect those rights previously granted to and vested in, the citizens of Idaho.

SECTION 2. That Section 40-107, Idaho Code, be, and the same is hereby amended to read as follows:

40-107. DEFINITIONS -- F.

(1) "Facilities" mean tracks, pipes, mains, conduits, cables, wires, towers, poles, equipment and appliances.

(2) "Family" means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(3) "Farm operation" means any activity conducted primarily for the production of agricultural products or commodities, including timber, for sale and home use, and producing agricultural products or commodities in sufficient quantity to contribute materially to the operator's support.

(4) "Feeder highway" means any highway which, in the opinion of the transportation board, is needed to create or facilitate access to a turnpike project upon which a toll is charged for transit.

(5) "Federal land rights of way" mean rights of way on federal land within the context of Revised Statute 2477, codified as 43 United States Code 932, and other federal access grants and shall be considered to be any road, trail, access or way upon which construction has been carried out to the standard in which public rights of way were built within historic context. These rights of way may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads and all other ways.

SECTION 3. That Chapter 2, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-204A, Idaho Code, and to read as follows:

40-204A. FEDERAL LAND RIGHTS OF WAY. (1) The state recognizes that the act of construction and first use constitute the acceptance of the grant given to the public for federal land rights of way, and that once acceptance of the grant has been established, the grant shall be for the perpetual term granted by the congress of the United States.

(2) The only method for the abandonment of these rights of way shall be that of eminent domain proceedings in which the taking of the public's right to access shall be justly compensated. Neither the mere passage of time nor the frequency of use shall be considered a justi-

fication for considering these rights of way to have been abandoned.

(3) All of the said rights of way shall be shown by some form of documentation to have existed prior to the withdrawal of the federal grant in 1976 or to predate the removal of land through which they transit from the public domain for other public purposes. Documentation shall take the form of at least a map, and an affidavit. Surveys, books and other historic information may also be included.

(4) These rights of way shall not require maintenance for the passage of vehicular traffic, nor shall any liability be incurred for injury or damage through a failure to maintain the access or to maintain any highway sign. These rights of way shall be traveled at the risk of the user and may be maintained by the public through usage by the public.

(5) Any member of the public, the state of Idaho and any of its political subdivisions, and any agency of the federal government may choose to seek validation of its rights under law to use granted rights of way either through a process set forth by the state of Idaho, through processes set forth by any federal agency or by proclamation of user rights granted under the provisions of the original act, Revised Statute 2477.

These rights of way shall not be required to possess centerline surveys typical of publicly maintained roads, but shall be surveyed prior to being accepted into the maintained public highway system.

Neither the granting of the original right of way nor any provision in this or any other state act shall be construed as a relinquishment of either federal ownership or management of the surface estate of the property over which the right of way passes.

(6) Persons seeking acknowledgement of federal land rights of way shall file with the county recorder the request for acknowledgement and for any supporting documentation. The county recorder shall place the acknowledgement on the official county road system map.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 143
(H.B. No. 407)

AN ACT

APPROPRIATING MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Superintendent of Public Instruction/State Department of Education the following amounts, to be expended according to the designated expense classes

from the listed funds for the period July 1, 1993, through June 30, 1994:

FROM:	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
General Fund	$2,161,500	$ 788,100	$20,200	$ 185,600	$ 3,155,400
Federal Grant Fund	2,125,500	1,728,000		71,848,000	75,701,500
Public Instruction Fund	175,100	768,400		600	944,100
Driver Education Fund	100,900	121,500		1,401,400	1,623,800
Data Processing Services Fund	121,000	35,800			156,800
Agriculture in the Classroom Fund				11,600	11,600
TOTAL	$4,684,000	$3,441,800	$20,200	$73,447,200	$81,593,200

SECTION 2. It is legislative intent that an amount, not to exceed $1,000 of the General Fund moneys appropriated in Section 1 of this act, may be used at the discretion of the Superintendent of Public Instruction to assist in defraying expenses relating to or resulting from the discharge of his official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

Approved March 25, 1993.

CHAPTER 144
(H.B. No. 408)

AN ACT

EXPRESSING LEGISLATIVE INTENT AND APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is legislative intent that the expenditures for the Department of Administration not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	$ 5,879,600
Operating Expenditures	5,280,400
Capital Outlay	531,800
Trustee & Benefit Payments	6,689,100
TOTAL	$18,380,900

FROM:	
General Fund	$ 2,898,600
Accounting and Administrative Services Fund	8,665,900
Employee Assistance Program Fund	40,000
Permanent Building Fund	5,581,600
Federal Surplus Property Revolving Fund	408,400
Employee Group Insurance Fund	322,800
Retained Risk Fund	463,600
TOTAL	$18,380,900

SECTION 2. There is hereby appropriated to the Department of Administration the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. CENTRAL ADMINISTRATION:					
FROM:					
General Fund	$ 118,700	$ 66,500			$ 185,200
Accounting and Administrative Services Fund	555,100	288,000			843,100
Employee Assistance Program Fund	15,000	25,000			40,000
TOTAL	$ 688,800	$ 379,500			$ 1,068,300
II. GENERAL SERVICES:					
FROM:					
General Fund	$ 427,200	$ 65,600			$ 492,800
Accounting and Administrative Services Fund	1,231,300	557,600	$299,800		2,088,700
TOTAL	$1,658,500	$ 623,200	$299,800		$ 2,581,500
III. PUBLIC WORKS:					
FROM:					
General Fund		$ 2,100	$ 35,000	$1,675,000	$ 1,712,100
Accounting and Administrative Services Fund	$ 991,900	2,710,700	28,000	785,000	4,515,600
Permanent Building Fund	945,700	361,800	45,000	4,229,100	5,581,600
TOTAL	$1,937,600	$3,074,600	$108,000	$6,689,100	$11,809,300
IV. PURCHASING:					
FROM:					
General Fund	$ 347,100	$ 161,400			$ 508,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Accounting and Administrative Services Fund	527,600	616,900	$ 74,000		1,218,500
Federal Surplus Property Revolving Fund	262,100	146,300			408,400
TOTAL	$1,136,800	$ 924,600	$ 74,000		$ 2,135,400
V. INSURANCE MANAGEMENT:					
FROM:					
Employee Group Insurance Fund	$ 195,100	$ 127,700			$ 322,800
Retained Risk Fund	262,800	150,800	50,000		463,600
TOTAL	$ 457,900	$ 278,500	$ 50,000		$ 786,400
GRAND TOTAL	$5,879,600	$5,280,400	$531,800	$6,689,100	$18,380,900

Approved March 25, 1993.

CHAPTER 145
(H.B. No. 409)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CERTAIN TRANSFERS BEING CONTINUOUSLY APPROPRIATED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Idaho Transportation Department the following amount, to be expended for designated Divisions according to designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. GENERAL SUPPORT DIVISION:					
(1) MANAGEMENT SERVICES					
FROM:					
State Highway Fund	$ 4,709,300	$ 1,639,500	$ 937,600	$ 338,100	$ 7,624,500
(2) SUPPORT SERVICES					
FROM:					
State Highway Fund	3,486,000	1,648,300	210,300		5,344,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
(3) MOTOR VEHICLE SERVICES					
FROM:					
State Highway Fund	5,997,100	3,351,200	146,100		9,494,400
TOTAL	$14,192,400	$ 6,639,000	$ 1,294,000	$ 338,100	$ 22,463,500
B. HIGHWAYS DIVISION:					
(1) PROJECT DEVELOPMENT					
FROM:					
State Highway Fund	$ 3,774,100	$ 487,700	$ 175,900		$ 4,437,700
(2) HIGHWAY OPERATIONS					
FROM:					
State Highway Fund	5,318,000	1,192,600	420,000		6,930,600
Highway Safety Fund				$1,161,000	1,161,000
(3) DISTRICT OPERATIONS					
FROM:					
State Highway Fund	42,956,400	31,400,100	9,998,100	276,800	84,631,400
(4) CONTRACT CONSTRUCTION					
FROM:					
State Highway Fund			144,580,000		144,580,000
(5) CAPITAL FACILITIES					
FROM:					
State Highway Fund			3,520,000		3,520,000
TOTAL	$52,048,500	$33,080,400	$158,694,000	$1,437,800	$245,260,700
C. AERONAUTICS DIVISION:					
FROM:					
State Aeronautics Fund	$ 552,900	$ 377,000	$ 9,500	$ 300,000	$ 1,239,400
D. PUBLIC TRANSPORTATION DIVISION:					
FROM:					
State Highway Fund	$ 267,000	$ 95,600	$ 33,300	$1,517,500	$ 1,913,400
E. INTERDEPARTMENTAL SERVICES DIVISION:					
FROM:					
State Aeronautics Fund	$ 65,100	$ 230,700			$ 295,800
State Highway Fund	82,400	776,000			858,400
TOTAL	$ 147,500	$ 1,006,700			$ 1,154,200
GRAND TOTAL	$67,208,300	$41,198,700	$160,030,800	$3,593,400	$272,031,200

SECTION 2. It is legislative intent that all moneys transferred to the local bridge inspection fund, to the local highway needs assessment fund, and to the railroad grade crossing protection fund are hereby continuously appropriated to the Idaho Transportation Department for that purpose.

Approved March 25, 1993.

CHAPTER 146
(S.B. No. 1117)

AN ACT

RELATING TO THE OPERATION OF BOATS; AMENDING CHAPTER 70, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-7038, IDAHO CODE, TO PROVIDE FOR A MUFFLER REQUIREMENT AND NOISE RESTRICTIONS FOR MOTORBOATS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 70, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-7038, Idaho Code, and to read as follows:

67-7038. MUFFLERS AND NOISE RESTRICTIONS. (1) It shall be unlawful for any person to operate, or permit the operation of, any motorboat on the waters of the state of Idaho unless the motorboat shall at all times be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.

(2) For the purposes of this section, "muffler" shall mean a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise.

(3) It shall be unlawful for any person to operate, or permit the operation of, any motorboat on the waters of the state of Idaho in such a manner as to exceed the following noise levels:

(a) For motorboats manufactured before January 1, 1995, a noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005;

(b) For motorboats manufactured on or after January 1, 1995, a noise level of 88dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005.

(4) It shall be unlawful for any person to operate, or permit the operation of, any motorboat on any lake or reservoir of the state of Idaho, which is more than five hundred (500) feet in width, in such a manner as to exceed a noise level of 75dB(A) measured as specified in SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.

(5) No person shall operate, or give permission for the operation

of, any motorboat on the waters of the state of Idaho that is equipped with an altered muffler or a muffler cutout, bypass or other device designed or so installed so that it can be used to continually or intermittently bypass or otherwise reduce or eliminate the effectiveness of any muffler or muffler system installed in accordance with the provisions of this section.

(6) No person shall remove, alter or otherwise modify in any way a muffler or muffler system in a manner which will prevent it from being operated in accordance with the provisions of this section.

(7) Effective January 1, 1995, a person shall not manufacture, sell or offer for sale any motorboat unless it is equipped with a muffler or muffler system which does comply with subsection (3) of this section. This subsection shall not apply to motorboats designed, manufactured and sold for the sole purpose of competing in racing events and for no other purpose.

(8) The provisions of this section shall not apply to motorboats registered and actually participating in an authorized marine event, or to a motorboat being operated by a boat or engine manufacturer for the sole purpose of testing and/or development.

(9) Any peace officer who has reason to believe that a motorboat is not in compliance with the noise levels established in this section may direct the operator of such motorboat to submit the motorboat to an on-site test to measure noise levels, with the officer on board if such officer chooses, and the operator shall comply with such request. If such motorboat exceeds the decibel levels established in this section, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the motorboat to a mooring and keeping the motorboat at such mooring until the violation is corrected or ceases.

SECTION 2. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 3. This act shall be in full force and effect on and after January 1, 1994.

Approved March 25, 1993.

CHAPTER 147
(S.B. No. 1243)

AN ACT

APPROPRIATING MONEYS FOR GENERAL EDUCATION PROGRAMS AT BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, THE UNIVERSITY OF IDAHO AND FOR THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 1994; LIMITING THE APPROPRIATION FOR THE OFFICE OF THE STATE BOARD OF EDUCATION; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE AMOUNT OF THE GENERAL FUND APPROPRIATION

THAT IS TO BE SPENT FOR RESEARCH; MAKING CERTAIN CODE PROVISIONS SPECIFICALLY AVAILABLE TO THE STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO; AND STATING LEGISLATIVE INTENT REGARDING ENROLLMENT WORKLOAD ADJUSTMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Board of Education and the Board of Regents of the University of Idaho for Boise State University, Idaho State University, Lewis-Clark State College, the University of Idaho, and the Office of the State Board of Education the following amount, to be expended for the designated program from the listed funds for the period July 1, 1993, through June 30, 1994:

FOR:	
General Education Programs	$184,376,300
FROM:	
General Fund	$146,013,700
State Endowment Funds	7,019,800
Interagency Billing and Receipts Fund	31,342,800
TOTAL	$184,376,300

SECTION 2. The appropriation for the Office of the State Board of Education in Section 1 of this act is to be used for system-wide needs and shall not exceed $75,000 of the General Fund for the period July 1, 1993, through June 30, 1994.

SECTION 3. It is legislative intent that $1,903,600 within the General Fund appropriation be limited to specific research funding, matching awards, research centers and infrastructure, with commercial application as a goal.

SECTION 4. The provisions of Sections 67-3608, 67-3609, 67-3610 and 67-3611, Idaho Code, are hereby specifically made available to the State Board of Education and the Board of Regents of the University of Idaho for the period of July 1, 1993, through June 30, 1994, the provisions of Section 67-3516(1), (3) and (4), Idaho Code, notwithstanding.

SECTION 5. It is legislative intent that the State Board of Education shall not include credit hours generated from full-fee paying nonresidents in the calculation of the Enrollment Workload Adjustment.

Approved March 25, 1993.

CHAPTER 148
(S.B. No. 1245)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE IN ADDITION TO THE APPROPRIATION MADE IN SECTION 3, CHAPTER 214, LAWS OF 1992;

AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 3, Chapter 214, Laws of 1992, there is hereby appropriated to the Department of Agriculture the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1992, through June 30, 1993:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ANIMAL INDUSTRY:				
FROM:				
Commercial Fisheries Fund	$ 6,000	$ 4,000		$ 10,000
Dairy Industry and Inspection Fund	11,300	19,000		30,300
TOTAL	$ 17,300	$ 23,000		$ 40,300
B. AGRICULTURAL TECHNOLOGY:				
FROM:				
Pesticide Fund		$ 66,000	$16,300	$ 82,300
C. PLANT INDUSTRY:				
FROM:				
General Fund	$ 49,000	$182,300	$ 500	$231,800
D. AGRICULTURAL INSPECTIONS:				
FROM:				
Fresh Fruit and Vegetable Inspection Fund	$450,000	$ 50,000		$500,000
E. QUALITY ASSURANCE LABORATORY:				
FROM:				
General Fund	$ 49,000	$ 41,700		$ 90,700
TOTAL:	$565,300	$363,000	$16,800	$945,100

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 149
(S.B. No. 1248)

AN ACT
APPROPRIATING MONEYS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Endowment Fund Investment Board the following amounts, to be expended according to designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$182,000	$ 94,100	$276,100
Professional Services Fund	60,700	29,600	90,300
TOTAL	$242,700	$123,700	$366,400

Approved March 25, 1993.

CHAPTER 150
(S.B. No. 1250)

AN ACT
APPROPRIATING MONEYS TO THE STATE INSURANCE FUND FOR FISCAL YEAR 1994; AND SPECIFYING THE SCOPE OF THE APPROPRIATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the administration of the State Insurance Fund the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds, for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. WORKERS' COMPENSATION:				
FROM:				
State Insurance Fund	$5,395,100	$1,469,200	$14,600	$6,878,900
II. UNDERGROUND STORAGE TANKS:				
FROM:				
Petroleum Clean Water Trust Fund	$ 541,400	$ 383,600		$ 925,000
TOTAL	$5,936,500	$1,852,800	$14,600	$7,803,900

SECTION 2. Moneys appropriated in Section 1 for the Underground Storage Tanks Program are pursuant to Section 41-4904(5)(a), Idaho Code. Amounts necessary to pay all other expenses, losses and claims incurred related to insuring governmental or private entities against legal liability due to petroleum product releases shall be perpetually appropriated to the manager of the State Insurance Fund as trustee, under the provisions of Section 41-4914, Idaho Code.

Approved March 25, 1993.

CHAPTER 151
(S.B. No. 1251)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR THE PERSONNEL COMMISSION FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Department of Administration for the Personnel Commission the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Personnel Commission Fund	$1,501,100	$446,800	$72,000	$2,019,900
Seminars and Publications Fund		54,700		54,700
TOTAL	$1,501,100	$501,500	$72,000	$2,074,600

Approved March 25, 1993.

CHAPTER 152
(S.B. No. 1167)

AN ACT

RELATING TO SENTENCING IN CHILD SEXUAL ABUSE OFFENSES; AMENDING CHAPTER 25, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-2520G, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE A MANDATORY MINIMUM SENTENCE OF FIVE YEARS FOR REPEAT OFFENDERS WHO PREVIOUSLY HAVE BEEN FOUND GUILTY OF OR PLEADED GUILTY TO, A VIOLATION OF THE PROVISIONS OF SECTION 18-1506, 18-1508 OR 18-1508A, IDAHO CODE, OR AN OFFENSE COMMITTED IN ANOTHER STATE WHICH, IF COMMITTED IN THIS STATE, WOULD BE PUNISHABLE PURSUANT TO SECTION 18-1506, 18-1508 OR 18-1508A, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 25, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-2520G, Idaho Code, and to read as follows:

19-2520G. MANDATORY MINIMUM SENTENCING. (1) Pursuant to section 13, article V of the Idaho constitution, the legislature intends to provide mandatory minimum sentences for repeat offenders who have previously been found guilty of or pleaded guilty to child sexual abuse.

The legislature hereby finds and declares that the sexual exploitation of children constitutes a wrongful invasion of a child and results in social, developmental and emotional injury to the child. It is the policy of the legislature to protect children from the physical and psychological damage caused by their being used in sexual conduct. In order to protect children from becoming victims of this type of conduct by perpetrators, it is necessary to provide the mandatory minimum sentencing format contained in subsection (2) of this section. By enacting mandatory minimum sentences, the legislature does not seek to limit the court's power to impose in any case a longer sentence as provided by law.

(2) Any person who is found guilty of violating the provisions of section 18-1506 (sexual abuse of a child under age sixteen years), 18-1508 (lewd conduct with a minor under sixteen), or 18-1508A, Idaho Code (sexual battery of a minor child sixteen or seventeen years of age), or any attempt or conspiracy to commit such a crime, shall be sentenced to a mandatory minimum term of confinement to the custody of the state board of correction for a period of not less than five (5) years, if it is found by the trier of fact that previous to the commission of such crime the defendant has been found guilty of or has pleaded guilty to a violation of any such crime or an offense committed in another state which, if committed in this state, would be punishable pursuant to any of the sections of the Idaho Code identified in this subsection.

(3) The mandatory minimum term provided in this section shall be imposed where the aggravating factor is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at a trial of the substantive crime. A court shall not have the power to suspend, withhold, retain jurisdiction, or commute a mandatory minimum sentence imposed pursuant to this section. Any sentence imposed under the provisions of this section shall run consecutive to any other sentence imposed by the court.

Approved March 25, 1993.

CHAPTER 153
(S.B. No. 1098, As Amended)

AN ACT

RELATING TO CONCEALED FIREARMS OR OTHER DEADLY OR DANGEROUS WEAPONS ON SCHOOL GROUNDS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3302D, IDAHO CODE, TO PROVIDE CRIMINAL SANCTIONS FOR PERSONS CARRYING A CONCEALED FIREARM OR OTHER DEADLY OR DANGEROUS WEAPON CONCEALED ON OR ABOUT HIS PERSON ON PUBLIC OR PRIVATE SCHOOL PROPERTY, TO PROVIDE PENALTIES, TO PROVIDE RIGHTS OF SCHOOL DISTRICT EMPLOYEES, TO PROVIDE EXCEPTIONS AND TO DEFINE TERMS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 33, Title 18, Idaho Code, be, and the

same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-3302D, Idaho Code, and to read as follows:

18-3302D. CARRYING CONCEALED FIREARMS ON SCHOOL PROPERTY. (1) It shall be unlawful and is a misdemeanor for any person under the age of twenty-one (21) to carry a firearm, dirk knife, bowie knife, dagger, metal knuckles or other deadly or dangerous weapon concealed on or about his person while on the property of a public or private elementary or secondary school or in those portions of any building, stadium or other structure on school grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school in this state or while riding school provided transportation. Provisions of this section shall not apply to persons in private vehicles delivering children to and from school or school activities. Persons who are found guilty of violating the provisions of this section may be sentenced to a jail term of not more than one (1) year, or if a minor, not in excess of one hundred twenty (120) days in a juvenile detention facility, or fined an amount not in excess of one thousand dollars ($1,000) or both. Additionally, the board of trustees of a school district may expel any person violating the provisions of this section if the violator is a student. The school may immediately suspend the student pursuant to the provisions of section 33-205, Idaho Code. If a violator is a student and under the age of eighteen (18), the court may place the violator on probation and suspend the juvenile detention or fine or both as long as the violator is enrolled in a program of study recognized by the court that, upon successful completion, will grant the violator a general equivalency diploma (GED) or a high school diploma or other educational program authorized by the court. Upon successful completion of the terms imposed by the court, the court shall discharge the offender from serving the remainder of the sentence. If the violator does not complete, is suspended from or otherwise withdraws from the program of study imposed by the court, the court, upon receiving such information, shall order the violator to commence serving the sentence provided for in this section.

(2) For purposes of enforcing the provisions of this section, employees of a school district shall be deemed to have the right to search all students or minors, their belongings and lockers which are reasonably believed to be in violation of the provisions of this section regarding the carrying of a firearm, dirk knife, bowie knife, dagger, metal knuckles or other deadly or dangerous weapon. A person shall not be deemed to be in violation of the provisions of this section if he is carrying a firearm as part of the requirements for a hunter safety course offered by or approved by the school district, or if the person is carrying a firearm while under the supervision of the school district or an employee thereof authorized to give such permission, or if the person is carrying the firearm pursuant to a requirement of law or in compliance with law.

(3) As used in this section, "firearm" means a pistol, revolver or other firearm designed to be fired with the use of a single hand. "Minor" means a person under the age of eighteen (18) years.

SECTION 2. An emergency existing therefor, which emergency is

hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 154
(S.B. No. 1012)

AN ACT

RELATING TO POSSESSION OF INHALANTS BY MINORS; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1502B, IDAHO CODE, TO PROHIBIT THE POSSESSION OF INHALANTS OR AEROSOL SPRAY PRODUCTS BY MINORS FOR THE PURPOSES OF UTILIZING THE CONTENTS TO BECOME UNDER THE INFLUENCE OF SUCH AEROSOL SUBSTANCE, AND TO DEFINE "INHALANT"; AND AMENDING SECTION 16-1803, IDAHO CODE, TO PROVIDE THAT MINORS ILLEGALLY POSSESSING INHALANTS SHALL NOT COME UNDER THE PURVIEW OF THE YOUTH REHABILITATION ACT UNLESS THE COURT ORDERS OTHERWISE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 15, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-1502B, Idaho Code, and to read as follows:

18-1502B. POSSESSION OF INHALANTS BY MINORS. Whenever a person under the age of eighteen (18) years is in possession and uses an aerosol spray product or other inhalant, that is not used pursuant to the instructions or prescription of a licensed health care provider or that is not used pursuant to the manufacturer's label instructions, for the purpose of becoming under the influence of such substance; such person shall be guilty of a misdemeanor, and upon conviction, may be punished by a fine not in excess of three hundred dollars ($300), or by thirty (30) days in a juvenile detention facility or by both or may be subject to the provisions of chapter 18, title 16, Idaho Code.

For the purposes of this section, the term "inhalant" means any glue, cement or other substance containing one (1) or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol, methyl alcohol, methyl ethyl ketone, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene or xylene or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

SECTION 2. That Section 16-1803, Idaho Code, be, and the same is hereby amended to read as follows:

16-1803. JURISDICTION. Subject to the prior jurisdiction of the United States, the court shall have exclusive, original jurisdiction over any child and over any adult who was a child at the time of any act, omission or status, in the county in which the minor resides, or in the county in which the act, omission or status allegedly took place, in the following cases:

1. Where the act, omission or status is prohibited by federal, state, local or municipal law or ordinance by reason of minority only, regardless of where the same occurred;

2. Where the act or omission is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult, regardless of where the same occurred, except traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt violations. A juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

3. Concerning any child where the child comes under the purview of the interstate compact on juveniles as set forth in chapter 19, title 16, Idaho Code;

4. This chapter shall not apply to juvenile violators of beer, wine or other alcohol and tobacco laws; except that a juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

5. This chapter shall not apply to the violent juvenile offender, as defined in this chapter;

6. This chapter shall not apply to juvenile violators of the provisions of section 18-1502B, Idaho Code, pertaining to the possession and usage of inhalants unless the court so orders the juvenile violator to come under the purview of this chapter.

Approved March 25, 1993.

CHAPTER 155
(S.B. No. 1002)

AN ACT

RELATING TO THE REGISTRATION OF SEX OFFENDERS; AMENDING TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 83, TITLE 18, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS, TO PROVIDE APPLICATION OF THE CHAPTER, TO PROVIDE TIME LIMITS FOR REGISTRATION, TO PROVIDE THE DURATION OF REGISTRATION, TO PROVIDE THE MANNER OF REGISTERING, TO PROVIDE FOR NOTICE OF THE DUTY TO REGISTER, TO PROVIDE THE EFFECT OF FALSE OR MISLEADING INFORMATION, TO PROVIDE APPLICATION OF THE PUBLIC RECORDS ACT, TO PROVIDE FOR EXPUNGEMENT OF RECORDS, AND TO PROVIDE A PENALTY; AND AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE FOR ADDITIONAL RECORDS THAT ARE EXEMPT FROM DISCLOSURE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 83, Title 18, Idaho Code, and to read as follows:

CHAPTER 83
SEX OFFENDER REGISTRATION ACT

18-8301. SHORT TITLE. This chapter shall be known and may be cited as the "Sex Offender Registration Act."

18-8302. FINDINGS. The legislature finds that sex offenders present a high risk of reoffense and that efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available about individuals who have pled guilty to or have been found guilty of sex offenses who live within their jurisdiction. Therefore, this state's policy is to assist efforts of local law enforcement agencies to protect their communities by requiring sex offenders to register with local law enforcement agencies as provided in this chapter.

18-8303. APPLICATION OF CHAPTER. (1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, pleads guilty to or is found guilty of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-6101 (rape), 18-6108 (male rape), 18-6605 (crime against nature), or 18-6608, Idaho Code, (forcible sexual penetration by use of a foreign object);

(b) Enters the state on or after July 1, 1993, and who has pled guilty to or has been found guilty of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States that is substantially equivalent to the offenses listed in subsection (1)(a) of this section.

(c) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(2) The provisions of this chapter shall not apply to any such person while the person is incarcerated in a correctional institution of the department of correction or a county jail facility.

18-8304. TITLE REGISTRATION -- TIME LIMIT -- DURATION PERIOD. (1) Any person who becomes subject to the provisions of this chapter on or after July 1, 1993, shall register, within five (5) days of coming into any county, with the sheriff of the county in which that per-

son resides or is temporarily domiciled.

(2) If there is an address change for a person required to register, such person shall inform the law enforcement agency with whom that person last registered of the new address, in writing, within five (5) days of such change.

(3) The law enforcement agency shall, within five (5) working days of receipt of the new address, forward this information to the law enforcement agency where such person would be required to register.

(4) Each law enforcement agency shall forward all written information, photographs and fingerprints obtained pursuant to this chapter to the Idaho department of law enforcement within five (5) working days. The Idaho department of law enforcement shall maintain a central registry of sex offenders who are required to register.

18-8305. DURATION OF REGISTRATION REQUIREMENT. Any person to whom this chapter applies shall be required to register during any period of probation or parole and shall continue to comply with the provisions of this chapter for a period of ten (10) years after the date of discharge from probation, parole or release from incarceration, whichever is greater.

18-8306. MANNER OF REGISTERING. Registration shall be in a form approved by the Idaho department of law enforcement and shall include the following information about the person registered:

(1) Name and all aliases which the person has used or under which the person has been known;

(2) A complete description of the person including the date of birth, social security number, photograph and fingerprints;

(3) Name of each offense covered in this chapter to which the person pled guilty or was found guilty, where each offense was committed, where the person pled guilty or was found guilty of each offense, and the name under which the person pled guilty or was found guilty of each offense;

(4) The name and location of each hospital, jail or penal institution to which the person was committed for each offense covered under this chapter; and

(5) Address of current residence and place of employment.

18-8307. NOTICE OF DUTY TO REGISTER. (1) The district court shall provide written notification at the time of sentencing of the duty to register pursuant to this chapter to any defendant who has pled guilty or has been found guilty of an offense as identified in subsection (1)(a) of section 18-8303, Idaho Code. The written notification shall be signed by the defendant and one (1) copy retained by the court, one (1) copy provided to the county prosecutor and one (1) copy provided to the defendant.

(2) The department of correction shall provide written notification of the duty to register pursuant to this chapter to any person committed or accepted to its custody for an offense identified in subsection (1)(a) of section 18-8303, Idaho Code, prior to the person's release from confinement or supervision. The written notice shall be signed by the person and one (1) copy shall be retained by the depart-

ment of correction, and one (1) copy provided to the person.

(3) The sheriff of each county shall provide written notification, and on a form approved by the attorney general, of the registration requirements of this chapter to any person who enters this state from another jurisdiction and makes an application for a license to operate a motor vehicle in this state. The written notice shall be signed by the person and one (1) copy shall be retained by the sheriff's office, and one (1) copy provided to the person.

18-8308. FALSE OR MISLEADING INFORMATION. No person subject to the registration provisions of this chapter shall wilfully furnish any false or misleading information in the registration required under this chapter.

18-8309. ACCESS TO INFORMATION. Access to information received pursuant to this chapter shall be determined by the provisions of subsection (11)(f) of section 9-340, Idaho Code.

18-8310. EXPUNGEMENT. (1) Any person having a duty to register under this chapter may file a petition with the district court for an order to expunge the information provided pursuant to this chapter.

(2) The petition shall be filed in the district court in the county in which the petitioner was convicted of a crime identified in section 18-8303, Idaho Code, or for a conviction in another state, the petition shall be filed in the district court in the county in which the person resides. The prosecuting attorney for the county shall be named as the respondent and shall be served with a copy of the petition.

(3) The court may grant the petition and issue an order to expunge the information if the petitioner shows by clear and convincing evidence the:

(a) Petitioner's duty to register under this chapter has expired;

(b) Petitioner does not have a criminal charge pending nor is the petitioner under criminal investigation for any crime identified in section 18-8303, Idaho Code; and

(c) Petitioner is not a substantial risk to commit a new violation for any crime identified in section 18-8303, Idaho Code.

18-8311. PENALTY. Any person who is required to register under this chapter who violates the provisions of section 18-8304 or 18-8308, Idaho Code, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed five (5) years and by a fine not to exceed five thousand dollars ($5,000).

SECTION 2. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public

agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records;

(f) Except as provided in this subsection, all information provided to a law enforcement agency for sex offender registration

pursuant to the provisions of section 18-8306, Idaho Code:

(i) Such information shall be available upon request to a law enforcement agency; and

(ii) The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name, date of birth and social security number of the person for whom the information is requested.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature

for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(37) Records containing information obtained by the manager of

the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(~~37~~8) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(~~37~~9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

Approved March 25, 1993.

CHAPTER 156
(H.B. No. 72)

AN ACT

RELATING TO TELEMARKETERS; AMENDING SECTION 48-1005, IDAHO CODE, TO CLARIFY LEGISLATIVE INTENT THAT TELEPHONE SOLICITORS WHO ARE REGISTERED WITH A STATE OF IDAHO GOVERNMENTAL AGENCY ARE EXEMPT FROM REGISTERING WITH THE OFFICE OF THE ATTORNEY GENERAL; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 48-1005, Idaho Code, be, and the same is hereby amended to read as follows:

48-1005. EXEMPTIONS. (1) The following telephone solicitors are exempt from the provisions of section 48-1004, Idaho Code:

(a) A person engaging in telephone solicitations where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent (60%) of such person's prior year's sales were made as a result of telephone solicitations as defined in this chapter.

(b) A person making a telephone solicitation where the purchaser contacted has previously purchased goods or services from the person or the business entity for which the person is calling.

(c) A person making a telephone solicitation:

(i) Without the intent to make or obtain provisional acceptance of a purchase during the telephone solicitation; and

(ii) Who only arranges for the major sales presentation to be made at a later face-to-face meeting between the person and the purchaser, and the later face-to-face meeting is not for the purpose of collecting the payment or delivering any item purchased.

(d) A person whose business is licensed by any federal or state of Idaho governmental agency, except the secretary of state office, which has the power to revoke any license issued by the agency.

(e) A person making a telephone solicitation solely for purposes of selling a subscription to or advertising in a newspaper or telephone directory of general circulation.

(f) A person making a telephone solicitation solely for purposes of selling a magazine, periodical, book, or musical or video recording:

(i) Under which the telephone solicitor provides the purchaser with a form which the purchaser may use to instruct the telephone solicitor not to ship the merchandise; and

(ii) Which complies with the federal trade commission's "use of negative option plans by sellers in commerce rule," 16 CFR 425, regulation concerning "use of negative option plans by sellers in commerce" or a continuity plan, subscription arrangement, series arrangement or single purchase under which the telephone solicitor ships goods to a purchaser who has consented in advance to receive such goods and the purchaser is given the opportunity to review goods for at least seven (7) days and to receive a full refund for return of undamaged goods.

(g) A person who has at least one (1) business location in the state under the same name as that used in connection with telephone solicitations and ninety percent (90%) of the person's business involves the purchaser's obtaining services and products at the person's business location.

(h) An issuer or subsidiary of an issuer that has a class of securities which is subject to section 12 of the securities

exchange act of 1934 (15 USC sec. 781) and which is either registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G) or (H) of subsection (g)(2) of that section.

(i) A person who solicits sales by periodically publishing and delivering a catalog of the person's merchandise to purchasers if the catalog:

(i) Contains a written description or illustration of each item offered for sale;

(ii) Includes the business address or home office address of the telephone solicitor;

(iii) Includes at least twenty-four (24) pages of written material and illustrations and are distributed in more than one state; and

(iv) Has an annual circulation by mailing of not less than two hundred fifty thousand (250,000).

(2) In any action, suit, or proceeding to enforce the provisions of this chapter, the burden of proving an exemption is upon the person claiming it.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 157
(H.B. No. 85, As Amended in the Senate)

AN ACT

RELATING TO THE PRACTICE OF CHIROPRACTIC; AMENDING SECTION 54-704, IDAHO CODE, TO DEFINE ADJUSTMENT, MANIPULATION AND MASSAGE THERAPY; AMENDING SECTION 54-705, IDAHO CODE, TO PROVIDE THAT INDIVIDUALS LICENSED IN ANOTHER PROFESSION OR OCCUPATION ARE EXEMPT FROM THE PROVISIONS OF THE CHIROPRACTIC LICENSING CHAPTER; AMENDING SECTION 54-708, IDAHO CODE, TO PROVIDE PROPER REFERENCES; AMENDING SECTION 54-709, IDAHO CODE, TO UPDATE LANGUAGE; AMENDING SECTION 54-712, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY TAKE DISCIPLINARY ACTION AGAINST A LICENSEE; AMENDING CHAPTER 7, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-713, IDAHO CODE, TO PROVIDE FOR PENALTIES TO INCLUDE SUSPENSION, REVOCATION OR RESTRICTION OF A LICENSE, PROBATION, LETTERS OF CENSURE OR REPRIMAND, AND TO PROVIDE AN ADMINISTRATIVE FINE; AND AMENDING SECTION 54-713, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT FAILURE TO COMPLY WITH THE PROVISIONS OF THE SECTION SHALL CONSTITUTE GROUNDS FOR DISCIPLINARY ACTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-704, Idaho Code, be, and the same is hereby amended to read as follows:

54-704. CHIROPRACTIC PRACTICE. Chiropractic practice and procedures which may be employed by physicians are as follows:

(1) The system of specific adjustment or manipulation of the articulations and tissues of the body; the investigation, examination and clinical diagnosis of conditions of the human body and the treatment of the human body by the application of manipulative, manual, mechanical, physiotherapeutic or clinical nutritional methods and may include the use of diagnostic X-rays.

(a) "Adjustment" means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the express purpose of creating a desired angular movement in skeletal joint structures in order to eliminate or decrease interference with neural transmission and correct or attempt to correct subluxation complex; "chiropractic adjustment" utilizes, as appropriate, short lever force, high velocity force, short amplitude force, or specific line-of-correction force to achieve the desired angular movement, as well as low force neuromuscular, neurovascular, neuro-cranial, or neuro-lymphatic reflex technique procedures.

(b) "Manipulation" means an application of a resistive movement by applying a nonspecific force without the use of a thrust, that is directed into a region and not into a focal point of the anatomy for the general purpose of restoring movement and reducing fixation.

(c) "Massage therapy," also called massology, means the systematic manual or mechanical mobilization of the soft tissue of the body by such movements as rubbing, kneading, pressing, rolling, slapping and tapping, for the purpose of promoting circulation of the blood and lymph, relaxation of muscles, release from pain, restoration of metabolic balance, and the other benefits both physical and mental.

(2) Nothing herein contained shall allow any physician to:

(a) Perform surgical operations or practice obstetrics;

(b) Direct or suggest to the patient that such patient shall use a substance which, under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) "Caution: Federal Law Prohibits Dispensing Without Prescription"; or (ii) "Caution: Federal Law Restricts This Drug To Use By or On The Order Of A Licensed Veterinarian"; or (iii) a product which is required by any applicable federal or state law regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(3) Chiropractic practice, as herein defined is hereby declared not to be the practice of medicine within the meaning of the laws of the state of Idaho defining the same, and physicians licensed pursuant to this chapter shall not be subject to the provisions of chapter 18, title 54, Idaho Code, nor liable to any prosecution thereunder, when acting within the scope of practice as defined in this chapter.

SECTION 2. That Section 54-705, Idaho Code, be, and the same is hereby amended to read as follows:

54-705. EXCEPTIONS -- PROHIBITED PRACTICES -- NEGLIGENCE ESTAB-

LISHED. (1) Under the circumstances described and, subject in each case to the limitations stated, the following persons, though not holding a license to practice chiropractic in this state, may engage in activities included in the practice of chiropractic:

(a) A person licensed by this state pursuant to chapter 18, title 54, Idaho Code;

(b) A chiropractic assistant as shall be defined and regulated by the board, administering a procedure set forth in section 54-704, Idaho Code, but not including the adjustment or manipulation of articulations of the body, as specifically directed by a chiropractic physician as long as such directions are within the scope of chiropractic practice;

(c) A person rendering aid in an emergency, for which no fee for the services is contemplated, charged or received;

(d) A person residing in another state or country and authorized to practice chiropractic there, who is called in consultation by a person licensed in this state to practice chiropractic, or who for the purpose of furthering chiropractic education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;

(e) A person authorized to practice chiropractic in another state or country rendering chiropractic care in a time of disaster or while caring for an ill or injured person while at the scene of an emergency and while continuing to care for such person;

(f) Nothing in this chapter shall be construed as preventing or restricting the practice, services or activities or requiring licensure pursuant to the provisions of this chapter, of any person licensed or registered in this state by any other law, from engaging in any health care profession or occupation for which such person is licensed or registered.

(g) Any person exempted under the provisions of section 54-1804, Idaho Code.

(h) Any person who practices massage therapy as defined in section 54-704(c), Idaho Code.

(2) Except as provided in subsection (1) of this section, it is unlawful for any person to practice chiropractic in this state without a license and, upon conviction thereof, shall be fined not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000), or imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment.

(3) It is unlawful for any person to assume or use the title or designation "chiropractor," "chiropractic physician," "doctor of chiropractic," the initials "D.C.," or any word or title or abbreviation thereof calculated to induce the belief that he is engaged in the practice of chiropractic or to indicate to the public that such person is licensed to practice chiropractic pursuant to this act unless such person is so licensed, and upon conviction thereof, such person shall be fined not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000), or imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprison-

ment.

(4) When a person has been a recipient of services constituting the unlawful practice of chiropractic, whether or not he knew the rendition of the services was unlawful, proof of the rendition of unlawful services to the recipient, in an action against the provider of such services for damages allegedly caused by the services, constitutes prima facie evidence of negligence, shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

(a) Amount of any fees paid for the unlawful services; and

(b) Reasonable attorney fees and court costs.

(5) The board shall refer all violations made known to it to an appropriate prosecuting attorney. The board shall render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

SECTION 3. That Section 54-708, Idaho Code, be, and the same is hereby amended to read as follows:

54-708. BOARD TO ISSUE LICENSES. (1) The board shall issue licenses to practice chiropractic to persons who have qualified therefor in accordance with the provisions of this chapter. The board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by sections 54-704 and 54-712, Idaho Code, provided, that the board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. Such licenses shall be issued after payment of the licensing fee in an amount to be fixed by the board, and such licenses shall be issued for a period of one (1) year. Licenses to practice chiropractic shall be renewed on their expiration upon completion of a renewal application and upon payment of a renewal fee, the amount of which shall be fixed by the board, which fee shall not exceed one hundred dollars ($100).

(2) The board may renew, on an inactive basis, the license of a physician who is not practicing chiropractic in this state. The board shall fix and collect an inactive license fee for such an inactive license renewal in an amount not to exceed one hundred dollars ($100) and each inactive license shall be issued for a period of one (1) year. A physician holding an inactive license may not engage in the practice of chiropractic in this state. If a physician wishes to convert his inactive license to an active license, he must account to the board for that period of time in which he held an inactive license. All fees authorized by subsections (1) and (2) of this section shall be paid to the bureau of occupational licenses.

(3) Whenever the board determines that an applicant for a license to practice chiropractic is not qualified for such a license pursuant to the provisions of this chapter, the board shall notify the applicant by certified mail of its denial of licensure and the reasons for denial.

SECTION 4. That Section 54-709, Idaho Code, be, and the same is hereby amended to read as follows:

54-709. LICENSURE BY WRITTEN EXAMINATION. (1) Any person seeking to be licensed to practice chiropractic in this state must successfully complete the following requirements before a license will be issued:

(a) Each applicant must submit a completed written application to the board on forms furnished by the board, which shall require proof of graduation from an acceptable school of chiropractic;

(b) Each applicant must pass an examination conducted by or acceptable to the board which shall thoroughly test the applicant's fitness to practice chiropractic. Such examinations must include, but shall not be limited to, the following subjects: anatomy and histology; clinical blood chemistry and hematology; pathology; bacteriology; clinical nutrition; hygiene and sanitation; physiology; symptomatology; urinalysis; chiropractic jurisprudence; chiropractic orthopedics; physiotherapy; chiropractic principles, clinical and physical diagnosis; chiropractic adjustment; neurology, and palpation.

(2) If an applicant fails to pass an examination on two (2) separate occasions, he shall not be eligible to take the examination again for at least one (1) year, and before taking the examination again, he must make a showing to the board that he has successfully engaged in a course of study for the purpose of improving his ability to engage in the practice of chiropractic. Applicants who fail two (2) separate examinations in another state, territory or district of the United States or Canada, must make a showing to the board of successful completion of a course of study prior to examination for licensure.

(3) ~~Each a~~Applicants ~~shall~~ may be personally interviewed by the board or a designated committee of the board. The interviews ~~shall~~ may be conducted to specifically review the applicant's qualifications and professional credentials. The applicant shall be further examined by the board to determine that the applicant possesses the arts and skills of chiropractic adjusting.

SECTION 5. That Section 54-712, Idaho Code, be, and the same is hereby amended to read as follows:

54-712. DISCIPLINE BY THE BOARD -- GROUNDS. ~~The board may suspend or revoke a license to practice chiropractic~~ Any license or permit issued under the provisions of this chapter shall be subject to restriction, suspension, revocation or other discipline pursuant to the provisions of sections 54-707 and 54-713, Idaho Code, if the board finds that the licensee:

(1) Has been convicted, found guilty, received a withheld judgment or suspended sentence in this or any other state of a felony or a crime involving moral turpitude;

(2) Used false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this chapter or misrepresented or concealed a material fact in obtaining licensing, renewal or reinstatement;

(3) Practiced chiropractic under a false or assumed name in this or any other state;

(4) Advertised the practice of chiropractic in a false, misleading or deceptive manner;

(5) Knowingly aided or abetted any person to practice chiropractic who is not authorized to practice chiropractic as provided in this chapter or failed to adequately supervise auxiliary staff who have contact with patients which creates or results in an unreasonable risk of harm to the patient;

(6) Is unable to obtain or renew a license to practice chiropractic, or whose license to practice chiropractic has been restricted, revoked or suspended by any other state, territory or district of the United States or ~~Canada~~ foreign jurisdiction; a certified copy of the order shall be conclusive evidence of any restriction, revocation or suspension of a license;

(7) Failed to safeguard the confidentiality of chiropractic records or other chiropractic information pertaining to identifiable clients, except as required or authorized by law;

(8) Practiced chiropractic when a license pursuant to this chapter is suspended, revoked, or inactive due to failure to renew the annual license within the time and manner required by the board; ~~or~~

(9) Refused to divulge to the board, upon demand, the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity;

(10) Has engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient;

(11) Has committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude; ~~or~~

(12) Is unable to practice chiropractic with reasonable skill and safety by reason of:

(a) Mental illness; or

(b) Physical illness including, but not limited to, physical deterioration which adversely affects cognitive, motor or perceptive skills; or

(c) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or any other substances which impair ability; or

(d) Having a communicable, contagious or infectious disease which endangers the health of patients;

(13) Has violated the standard of care or code of ethics as adopted by the board or misrepresented or committed fraud in any aspect of the business or practice of chiropractic;

(14) Promoted unnecessary or inefficacious treatment, procedures, devices or services or practiced in an incompetent or negligent manner resulting in or creating an unreasonable risk of harm; or

(15) Has violated any provision of this act or any rule promulgated by the board for the administration or enforcement of this act, interfered with the board's conduct of investigations, hearings or any other matters relating to discipline including, but not limited to, misrepresenting facts, attempting to influence witnesses or failing to answer subpoenas, or otherwise failed to cooperate with the board in the fulfillment of its duties.

SECTION 6. That Chapter 7, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-713, Idaho Code, and to read as

follows:

54-713. PENALTIES AND REINSTATEMENT. (1) Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or renewing a license under the provisions of this chapter, the board may impose one (1) or more of the following penalties:

(a) Suspension of the offender's license for a term to be determined by the board;

(b) Revocation of the offender's license;

(c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of chiropractic in a particular manner for a term to be determined by the board;

(d) Refusal to renew the offender's license;

(e) Placement of the offender on probation and supervision by the board for a period of time and under terms and conditions to be determined by the board;

(f) Imposition of an administrative fine not to exceed two thousand dollars ($2,000) plus costs of prosecution and reasonable attorney fees;

(g) Written letters of censure or reprimand which shall become a permanent record in the files of the licensee and which may be published within the discretion of the board; or

(h) Restitution for losses suffered or reimbursement for any damages incurred by a patient as a result of a violation of this chapter.

(2) In lieu of the penalties imposed by subsection (1) of this section, the board and licensee may enter into a written mutual agreement whereby the licensee agrees to discontinue a particular activity or comply with the provisions of this chapter without an admission or finding of culpability of the licensee, the violation of which may be the basis for disciplinary action by the board.

(3) Any person whose license to practice chiropractic in this state has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(4) Nothing herein contained shall be construed as barring criminal prosecutions for violations of the provisions of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(5) All final decisions by the board shall be subject to judicial review pursuant to the provisions of the administrative procedure act.

SECTION 7. That Section 54-713, Idaho Code, be, and the same is hereby amended to read as follows:

54-71~~3~~4. OBSERVATION OF PUBLIC HEALTH LAW. Each physician shall

observe and be subject to all state, federal, and municipal regulations relating to the control of contagious and infectious diseases, reporting and certifying deaths and all matters pertaining to public health. Failure to comply with these requirements shall constitute grounds for disciplinary action pursuant to the provisions of this chapter.

Approved March 25, 1993.

CHAPTER 158
(H.B. No. 87)

AN ACT

RELATING TO PROSECUTIONS UNDER THE CONTROLLED SUBSTANCES ACT; AMENDING SECTION 37-2745, IDAHO CODE, TO PROVIDE THAT A CERTIFIED COPY OF THE ANALYTICAL REPORT OF A CONTROLLED SUBSTANCE PREPARED BY THE IDAHO FORENSIC LABORATORY SHALL BE ADMISSIBLE INTO EVIDENCE WITHOUT FURTHER EVIDENTIARY FOUNDATION, PROVIDING FOR SUBPOENA OF THE CRIMINALIST PERFORMING THE ANALYSIS BY THE DEFENDANT, AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2745, Idaho Code, be, and the same is hereby amended to read as follows:

37-2745. BURDEN OF PROOF -- LIABILITIES. (a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under the provisions of this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration, valid prescription, or order form issued under the provisions of this act, he is presumed not to be the holder of the registration, valid prescription or form. The burden of proof is upon him to rebut the presumption.

(c) In all prosecutions under the provisions of this act involving the analysis of a controlled substance or a sample thereof, a certified copy of the analytical report with the notarized signature of the bureau chief of the Idaho forensic laboratory and the criminalist who conducted the analysis shall be accepted as prima facie evidence of the results of the analytical findings.

(d) Notwithstanding any statute or rule to the contrary, the defendant may subpoena the criminalist to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

(e) No liability is imposed ~~by~~ under the provisions of this act upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties.

Approved March 25, 1993.

CHAPTER 159
(H.B. No. 100)

AN ACT

RELATING TO ELECTIONS OF COUNTY COMMISSIONERS; AMENDING SECTION 34-617, IDAHO CODE, TO REQUIRE A CANDIDATE FOR COUNTY COMMISSIONER TO RESIDE WITHIN HIS DISTRICT NINETY DAYS PRIOR TO THE PRIMARY ELECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 34-617, Idaho Code, be, and the same is hereby amended to read as follows:

34-617. ELECTION OF COUNTY COMMISSIONERS -- QUALIFICATIONS. (1) A board of county commissioners shall be elected in each county at the general elections as provided by section 31-703, Idaho Code.

(2) No person shall be elected to the board of county commissioners unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States, and shall have resided in the county one (1) year next preceding his election and in the district which he represents for a period of ninety (90) days next preceding ~~his~~ the primary election.

(3) Each candidate shall file his declaration of candidacy with the county clerk. Each declaration shall have attached thereto a petition which contains the signatures of not less than five (5) nor more than ten (10) qualified electors from his commissioner district.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars ($40.00) which shall be deposited in the county treasury.

Approved March 25, 1993.

CHAPTER 160
(H.B. No. 110, As Amended)

AN ACT

RELATING TO THE CONTINUATION OF CHILD SUPPORT GUIDELINES; AMENDING SECTION 32-706A, IDAHO CODE, TO EXTEND THE SUNSET DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 32-706A, Idaho Code, be, and the same is hereby amended to read as follows:

32-706A. PURPOSE -- AUTHORIZATION TO ADOPT GUIDELINES -- GUIDELINES TO BE PRESUMPTIVE. A. The purpose of this act is to provide compliance with recent federal action whereby the congress of the United States has enacted 42 USC 667 as amended by public law 100-485, 102 STAT 2343, which measure requires that, effective October 13, 1989, as

a condition to having a state plan for the receipt of federal aid for dependent children funds approved, a state must establish child support guidelines, which are to have a rebuttable presumption of being the correct amount for purposes of setting the level of child support, unless in a particular case the court finds, under criteria established by the legislature of the state that application of the guidelines would be unjust or inappropriate. In addition, the purpose of this act is to recognize and give presumptive effect to the child support guidelines which have been adopted by the supreme court of the state of Idaho, to be effective on and after April 1, 1989, which guidelines have been declared by the supreme court to be advisory, as an aid for the litigants and the courts to evaluate the needs of the children and the resources of the parents in determining the appropriate level of child support.

B. The legislature hereby authorizes and encourages the supreme court of the state of Idaho to adopt and to periodically review for modification, guidelines to promote uniform and adequate child support awards, to supplement the factors set forth in section 32-706, Idaho Code, to be used as an aid and a structure for litigants and courts to evaluate the individual circumstances of the needs of children and the resources of parents, in determining the levels of child support, and in evaluating the evidentiary circumstances of each individual case.

C. In arriving at the amount to be ordered as child support, the court, in addition to considering the factors described in section 32-706, Idaho Code, shall also apply the guidelines adopted by the supreme court of the state of Idaho on January 27, 1989, and as those guidelines are from time to time amended. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court.

D. The provisions of this section shall be null, void and of no force and effect on and after July 1, 1993~~4~~.

Approved March 25, 1993.

CHAPTER 161
(H.B. No. 111)

AN ACT

RELATING TO THE DROUGHT CONDITIONS IN THE STATE OF IDAHO; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-222A, IDAHO CODE, TO PROVIDE AUTHORITY TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO APPROVE TEMPORARY CHANGES IN THE POINT OF DIVERSION, PLACE AND PURPOSE OF THE USE OF WATER AND SPECIFYING CONDITIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-222A, Idaho Code, and to read as follows:

42-222A. EMERGENCY TRANSFERS DURING DROUGHT CONDITIONS. (1) Upon declaration of a drought emergency for an area designated by the director of the department of water resources and approved by the governor of the state of Idaho, the director of the department of water resources is authorized to allow temporary changes of point of diversion, place and purpose of use of valid existing water rights when the director of the department of water resources determines that such change(s) can be accomplished in accordance with the provisions of this section.

(2) Application for a temporary change shall be made upon forms provided by the department of water resources and shall be accompanied by an application fee of fifty dollars ($50.00) per application.

(3) The director of the department of water resources is not required to publish notice of the proposed change pursuant to the provisions of section 42-211 or 42-222(1), Idaho Code, and is not required to make findings as provided in said sections. A temporary change may be approved upon completion of the application form, payment of the filing fee and a determination by the director of the department of water resources that the proposed change can be properly administered and there is no information that the change will injure any other water right. If the water right to be changed is administered by a watermaster within a water district, the director of the department of water resources shall obtain and consider the recommendations of the watermaster before approving the temporary change application.

(4) All temporary changes approved pursuant to the provisions of this act shall expire on the date shown in the approval which shall not be later than December 31 of the year in which the emergency transfer approval is made and thereafter the water right shall revert to the point of diversion and place of use existing prior to the temporary change. Nothing herein shall be construed as approval to authorize the construction of a new well as a new point of diversion.

(5) The recipient of an approved temporary change issued pursuant to this section shall assume all risk that the diversion and use of the water may cause injury to other water rights, that the change constitutes an enlargement in use of the original right, that the use is not consistent with the conservation of water resources within the state of Idaho and that such use is not in the local public interest. Any applicant for a temporary change who is aggrieved by a denial by the director of the department of water resources of a temporary change pursuant to this act may request a hearing pursuant to the provisions of section 42-1701A(3), Idaho Code, and may seek judicial review of the final order of the director pursuant to the provisions of section 42-1701A(4), Idaho Code.

(6) Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses which nor-

mally have a full water supply except for a drought condition. Temporary changes may not be approved to provide water for new projects or to allow expansion of the use of water under existing water rights. If the right to use the water, the diversion works or the water delivery system is represented by shares of stock in a corporation or if such right, diversion works or delivery system is owned or managed by an irrigation district, no change in point of diversion or place or nature of use of such water shall be made or allowed without the written consent of such corporation or irrigation district.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 162
(H.B. No. 125)

AN ACT

RELATING TO THE REGULATION OF SECURITIES; AMENDING CHAPTER 14, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1435A, IDAHO CODE, TO PROVIDE FOR A FAIRNESS HEARING BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE WITH RESPECT TO A PLAN TO ISSUE SECURITIES THAT WILL BE EXEMPT FROM REGISTRATION REQUIREMENTS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 14, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1435A, Idaho Code, and to read as follows:

30-1435A. APPLICATION FOR APPROVAL TO ISSUE SECURITIES. (1) A corporation that is organized under the laws of this state or that has its principal place of business within this state may apply to the director for approval of a plan to issue securities in exchange for one (1) or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash. The director is expressly authorized to approve the terms and conditions of such a proposed plan after a hearing upon the fairness of such terms and conditions.

(a) An application for approval shall describe the proposed plan and shall be in such form, contain such information and be accompanied by such documents as the director shall reasonably require by rule or otherwise.

(b) An application for approval shall be set for hearing within thirty (30) days after the filing of the application. The applicant shall give notice of the hearing to all persons to whom securities are to be issued under the proposed plan, and all such per-

sons shall have the right to appear at the hearing.

(c) Within ten (10) days after the hearing, the director shall issue an order either granting or denying approval of the terms and conditions of the proposed plan. The order shall grant approval if the proposed plan is fair, equitable and free from fraud. The order shall deny approval if the proposed plan is unfair, inequitable or not free from fraud.

(2) Sections 30-1416 through 30-1433, Idaho Code, shall not apply to securities issued in accordance with a plan approved by the director pursuant to this section.

(3) Upon filing an application under the provisions of this section, the applicant shall pay to the director a filing fee of three hundred dollars ($300) and shall file with the director an undertaking to defray the costs of a hearing officer and a stenographer for the hearing provided in this section.

(4) This section is intended to provide for a fairness hearing before the director with respect to transactions which, if approved by the director, will be exempt from the registration requirements of the federal securities laws under section 3(a)(10) of the United States securities act of 1933, or any section comparable thereto which may subsequently be enacted.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 25, 1993.

CHAPTER 163
(H.B. No. 129)

AN ACT

RELATING TO THE UNDERGROUND STORAGE TANK UPGRADE ASSISTANCE PROGRAM; AMENDING SECTIONS 41-5001, 41-5005 AND 41-5006, IDAHO CODE, TO REPLACE REFERENCES TO THE DEPARTMENT OF COMMERCE WITH REFERENCES TO THE STATE TREASURER'S OFFICE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-5001, Idaho Code, be, and the same is hereby amended to read as follows:

41-5001. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Administrator" means a person appointed by the ~~director~~ treasurer of the ~~department of commerce~~ state of Idaho to administer the underground storage tank upgrade assistance program.

(2) "~~Department~~Office" means the ~~department of commerce~~ state treasurer's office of the state of Idaho.

(3) "Originating lender" means a bank or other financial institution which loans accounts to an owner for the purpose of financing the

upgrade or replacement of an underground storage tank or tanks or an underground storage tank system or systems.

(4) "Owner" means a petroleum retailer owning an underground storage tank or underground storage tank system which is subject to the requirements of the underground storage tank upgrade regulations.

(5) "Person" means any individual, partnership, association, corporation, joint venture or other commercial entity.

(6) "Petroleum or petroleum products" mean crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and aviation fuel.

(7) "Petroleum retailer" means any person selling petroleum or petroleum products at retail to the public.

(8) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into ground water, surface water, or surface or subsurface soils.

(9) "Replacement" means the replacement of an underground storage tank or tank system determined to be the only economically feasible alternative to the upgrade of such tank or tank system.

(10) "SBA" means the United States small business administration.

(11) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank used for storing motor fuel for noncommercial purposes;

(b) Tank used solely for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility including gathering lines regulated under:

(i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or

(ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et seq.); or

(iii) State laws comparable to the provisions of the law referred to in paragraph (d)(i) or (d)(ii) of this subsection as an intrastate pipeline facility;

(e) Surface impoundment, pit, pond or lagoon;

(f) Storm water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor; or

(j) Tanks with a capacity of one hundred ten (110) gallons or less.

The term "underground storage tank" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of

this definition.

(12) "Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment and containment system, if any.

(13) "Underground storage tank upgrade regulations" mean regulations for the upgrade of underground storage tanks promulgated by the United States environmental protection agency (EPA) pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act.

(14) "Upgrade" means the addition to or retrofit of an underground storage tank or underground storage tank system with items including, but not limited to, cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank or tank system to prevent the release of petroleum or petroleum products which are necessary to bring the tank or tank system into compliance with underground storage tank upgrade regulations.

(15) "UST" means an underground storage tank as herein defined and where the context requires shall also mean underground storage tank system as herein defined.

SECTION 2. That Section 41-5005, Idaho Code, be, and the same is hereby amended to read as follows:

41-5005. RULES AND REGULATIONS. The ~~department~~ office may promulgate rules and regulations to implement the provisions of this chapter. Such rules and regulations shall be promulgated in compliance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 3. That Section 41-5006, Idaho Code, be, and the same is hereby amended to read as follows:

41-5006. LIQUIDATION OF ACCOUNT. (1) Upon a determination by the administrator that the purposes for which the account was established have been accomplished, or that the continued operation of the account is no longer viable, the administrator shall submit a written request to the ~~director~~ treasurer of the ~~department~~ state of Idaho that the account be liquidated. If liquidation of the account is approved by the ~~director~~ treasurer, the account shall be liquidated under a written plan of liquidation filed with and approved by the ~~director~~ treasurer. After its approval by the ~~director~~ treasurer, the plan of liquidation for the account shall be binding upon all persons pecuniarily interested in the account. Pending effectuation of the plan of liquidation the ~~director~~ treasurer may impose such prohibitions or restrictions upon disbursement or use of account moneys as he deems advisable.

(2) Upon dissolution of the account, any assets remaining after the payment of any obligations of the account shall be deposited in the general account. Any amounts then owing but not yet paid to the account, including principal and interest due from originating lenders shall, upon receipt thereof, be deposited in the general account.

Approved March 25, 1993.

CHAPTER 164
(H.B. No. 202)

AN ACT

RELATING TO FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER; AMENDING SECTION 49-1404, IDAHO CODE, TO CLARIFY THE DEFINITION OF FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER AND TO PROVIDE THAT FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER IS A FELONY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1404, Idaho Code, be, and the same is hereby amended to read as follows:

49-1404. FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER -- PENALTY. (1) Any driver of a motor vehicle who wilfully flees or attempts to elude a pursuing police vehicle when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by a peace officer may be by emergency lights or siren.

(2) ~~A person convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or city jail for a period of not less than five (5) days nor more than ninety (90) days, or by a fine of not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300), or by both fine and imprisonment. On a second or subsequent conviction that person shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than three hundred dollars ($300), or by both fine and imprisonment.~~ An operator who violates the provisions of subsection (1) and while so doing:

(a) Travels in excess of thirty (30) miles per hour above the posted speed limit;

(b) Causes damage to the property of another or bodily injury to another;

(c) Drives his vehicle in a manner as to endanger or likely to endanger the property of another or the person of another; or

(d) Leaves the state;

is guilty of a felony.

(3) The department shall suspend the driver's license or privileges of a person convicted for a violation of the provisions of this section as provided in section 49-326, Idaho Code.

Approved March 25, 1993.

CHAPTER 165
(H.B. No. 203)

AN ACT

RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2229A, IDAHO

CODE, TO CLARIFY LANGUAGE AND INCORPORATE FEDERAL LAW; AMENDING SECTION 26-2234, IDAHO CODE, TO ALLOW FOR ADDITIONAL EXAMINATIONS AND TO CLARIFY LANGUAGE; AMENDING SECTION 26-2235, IDAHO CODE, TO PROVIDE FOR SUSPENSIONS AND CIVIL MONEY PENALTIES AND TO CLARIFY LANGUAGE; AMENDING SECTION 26-2236, IDAHO CODE, TO CLARIFY LANGUAGE; AMENDING SECTION 26-2239, IDAHO CODE, TO PROVIDE FURTHER EXEMPTIONS; AMENDING SECTION 26-2242, IDAHO CODE, TO PROVIDE FOR SUSPENSIONS AND PENALTIES AND TO CLARIFY LANGUAGE; AMENDING SECTION 26-2244, IDAHO CODE, TO PROVIDE FOR PENALTIES; AMENDING SECTION 26-2250, IDAHO CODE, TO CLARIFY LANGUAGE, TO DELETE LIMITED PERMITS AND CREATE A FOREIGN PERMIT; REPEALING SECTIONS 26-2251 AND 26-2252, IDAHO CODE; AMENDING CHAPTER 22, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2251, IDAHO CODE, TO PROVIDE FOR CANCELLATION AND RESTORATION OF LICENSES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 26-2229A, Idaho Code, be, and the same is hereby amended to read as follows:

26-2229A. REQUIREMENT OF FAIR, OPEN AND HONEST DEALING. (1) ~~Fair, open-and-honest-dealing.~~ Every ~~person~~ permittee, foreign permittee and ~~employee~~ licensee shall deal openly, fairly, and honestly without deception in the conduct of the collection agency business. When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against licensees, permittees and foreign permittees under the provisions of this chapter.

(2) ~~Disclosure-of-business-or-financial-relationship.~~ In any and every instance where the permittee has a managerial or financial interest in the creditor, or where the creditor has a managerial or financial interest in the permittee, disclosure of such interest must be made on each and every contact with a debtor in seeking to make a collection of any account, claim, or other indebtedness where such interest or relationship exists between creditor and permittee.

(3) ~~Interest,-incidental-fees-or-expenses.~~ No ~~person~~ permittee, foreign permittee or ~~employee~~ licensee shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses are ~~legally-chargeable~~ expressly authorized by statute or court rule against the debtor or have been judicially determined.

(4) ~~Letters,-forms-or-documents.~~ No person shall sell, distribute or make use of collection letters, demand forms or other printed matter which are made similar to or resemble governmental forms or documents, or legal forms used in civil or criminal proceedings.

(5) ~~Government--affiliation.~~ No person shall use any trade name, address, insignia, picture, emblem or any other means which creates any impression that such person is connected with or is an agency of government.

SECTION 2. That Section 26-2234, Idaho Code, be, and the same is

hereby amended to read as follows:

26-2234. INVESTIGATIONS, RECORDS AND PAYMENT OF FUNDS. (1) The director or his duly authorized representatives may make an annual examination, or more frequently in the director's discretion, of the place of business of each permittee and foreign permittee and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such permittees.

(2) The director may, upon his own motion, and shall, upon the sworn complaint in writing of any person, investigate the action of any person or persons claimed to have violated the provisions of this ~~act~~ chapter, and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such persons.

(3) Every permittee and foreign permittee shall execute to the director an agreement of consent to examination of any and all bank accounts of the permittee providing the director with authority to make such examination at any time the director, in his discretion, deems it to be in the public interest.

(4) The actual cost of examination ~~or~~ for the first annual examination each year and any investigation shall be paid to the director by each permittee so examined or investigated ~~at a rate per diem to be established--by--a regulation promulgated by the director at beginning of each year,~~ and the director may maintain an action for the recovery of such costs against the permittee or against the surety providing the bond to indemnify the state for such expenditures as required by this ~~act~~ chapter.

(5) Each permittee shall acknowledge in writing each account received for collection and shall maintain a record of such account, make a permanent record of all sums collected by him and of all disbursements made by him. Every permittee shall keep and preserve all records relating to accounts received for collection, collections, receipts, and disposal or disbursement of all creditors' funds for a period of five (5) years after the final disposition of any account. It shall be unlawful for any person to intentionally make any false entry, omit to make a necessary entry, mutilate, secrete away, destroy or otherwise dispose of any record mentioned in this subsection, provided a record may be disposed of after the five (5) year period heretofore provided.

(6) Every permittee shall, within thirty (30) days after the close of each calendar month, pay to his creditors the net proceeds of all collections made by the permittee during said calendar month. Each permittee shall report to the creditor all collections made by him and/or any payments made to the creditor within thirty (30) days after the close of each calendar month.

(7) Every permittee shall maintain his books and records in accordance with generally accepted accounting practices subject to such rules and regulations as adopted by the director.

(8) The director, may impound the creditors' accounts, or trust accounts of any permittee if it shall be deemed in the general public

interest.

SECTION 3. That Section 26-2235, Idaho Code, be, and the same is hereby amended to read as follows:

26-2235. DENIAL, SUSPENSION, REVOCATION~~,--CANCELATION,--OR--REFUSAL TO--RENEW~~ OF PERMIT. (1) An application for a permit may be ~~refused~~ denied and, after notice and hearing, a permit may be ~~denied,~~ suspended or revoked, ~~canceled,--or-the-renewal-thereof-refused~~ by the director if he finds that the holder of or the applicant for, or any member or manager of an applicant or holder, or any officer or manager of an applicant or holder of such permit:

(a) has violated any provision of this chapter or any rule or order of the director authorized under this chapter; or

(b) is not legally qualified to do business in this state; or

(c) has violated any contract or agreement of a type mentioned in this chapter; or

(d) has failed, refused, neglected, on demand, to pay or remit to any client the agreed portion of any sum collected by the permittee on any bill, claim, account or other indebtedness entrusted to such permittee for collection; or

(e) has failed to return to a debtor an amount that was not to be paid on his debts; or

(f) has made a material misstatement in the application for such permit or renewal; or

(~~c~~g) has obtained or attempted to obtain a permit or renewal by fraud or misrepresentation; or

(~~d~~h) has misappropriated or converted to his own use or illegally withheld moneys collected or held for any other person; or

(~~e~~i) has without properly qualifying as herein provided represented himself as a permittee for the purpose of soliciting for or representing any business covered ~~by~~ in this chapter; or

(~~f~~j) has been convicted of, found guilty of, pled guilty to, or has received a withheld judgment by a court of competent jurisdiction for forgery, embezzlement, fraud, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offense, any theft offense, a crime involving moral turpitude, or violating any provision of this chapter or is currently disbarred from the practice of law in any state; provided, the director may, in his discretion, issue a permit to any person convicted of any of the above enumerated crimes providing a period of five (5) years has elapsed from the date of his conviction, finding of guilty, plea of guilty, or withheld judgment; or

(~~g~~k) has had a permit revoked, canceled, or denied; or

(~~h~~l) owes outstanding, unpaid, delinquent and undisputed accounts or judgments.

(2) The director, after notice and hearing, may impose a civil penalty of not more than one thousand dollars ($1,000) for each violation upon any permittee found to have violated any provision of this chapter.

(3) Permits shall be issued hereunder only to persons who are, and to partnerships, firms, companies, and associations whose members and managers are, and to corporations whose managers are over twenty-

one (21) years of age.

SECTION 4. That Section 26-2236, Idaho Code, be, and the same is hereby amended to read as follows:

26-2236. ~~CANCELATION OR SUSPENSION OF PERMITS~~--- SUBPOENAS. ~~Any permit---or--license--issued--under--this--act--shall--be--subject--to cancelation-or-suspension-by-the-said-director-if-and--when--it--shall appear--to--his--satisfaction--that--the-holder-thereof-is-not-legally qualified-to-do-business-in-the-state-of-Idaho;-or--has--violated--any provision--of--this--act--or--of-any-contract-or-agreement-herein-mentioned;-or-has-failed;-neglected-or-refused;-upon-demand;--to--pay--or remit--to--any-creditor-the-agreed-portion-of-any-sum-collected-by-the permit-holder-on-account-of-any-bill;-claim;-account-or-other--indebtedness--entrusted--to-such-permit-holder-for-collection;-or-has-failed to-return-to-a-debtor-an-amount-that-was-not-to-be-paid-on-his--debts.~~ The director shall have the power to issue subpoenas and bring before him any person, book, or writing in this state, to swear witnesses and to take the testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in district courts of this state in civil cases. Any party to a proposed ~~cancelation,~~ revocation or suspension of a permit shall have the right of subpoena to compel the attendance of witnesses and produce all books and writing on his behalf. In case any witness shall fail or refuse to comply with a subpoena to appear before the director, the clerk of the district court of the county in which the administrative proceedings are held shall, upon demand of the director, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court. ~~If the-director-shall-determine-that-any-applicant-is--not--qualified--to receive-a-permit,-a-permit-shall-not-be-granted-to-said-applicant.~~ Any ~~denial,~~ revocation or suspension~~,--or--cancelation~~ of any permit or license provided for by this ~~act~~ chapter shall be governed by chapter 52, title 67, Idaho Code.

SECTION 5. That Section 26-2239, Idaho Code, be, and the same is hereby amended to read as follows:

26-2239. EXEMPTIONS. The provisions ~~hereof~~ of this chapter shall not apply to the following:

(1) ~~A~~any attorney-at-law duly authorized to practice in this state~~;,-or-to~~

(2) ~~A~~any regulated lender as defined in section 28-41-301(37), Idaho Code, nor any subsidiary, affiliate or agent of such a regulated lender to the extent that the subsidiary, affiliate or agent collects for the regulated lender;

(3) ~~or-a~~Any trust company authorized to do business in this state~~;~~;

(4) Any federal, state or local governmental agency or instrumentality;

(5) ~~nor--to--a~~Any real estate broker or real estate salesman

licensed under the laws of and residing within this state when engaged in the regular practice of a real estate business~~,~~;

(6) Any ~~nor~~ abstract and title companies doing an escrow business~~,~~;

(7) Any mortgage company to the extent that such mortgage company is engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code;

(8) ~~nor a~~Any court appointed trustee, receiver or conservator;

(9) Any telephone corporation, as defined in subsection (10) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent.

SECTION 6. That Section 26-2242, Idaho Code, be, and the same is hereby amended to read as follows:

26-2242. ~~GROUNDS FOR REFUSAL TO ISSUE~~ DENIAL, SUSPENSION, REVOCATION OF LICENSE. (1) A license application may be ~~refused~~ denied and, after notice and hearing, ~~be denied,~~ a license may be suspended or revoked ~~or the renewal thereof refused~~ by the director if he finds that the holder of or the applicant for such license:

(~~1~~a) Has violated any provision of this chapter; or

(~~2~~b) Has made a material misstatement in the application for such license; or

(~~3~~c) Has obtained or attempted to obtain a license or renewal by fraud or misrepresentation; or

(~~4~~d) Has misappropriated or converted to his own use or illegally withheld moneys collected or held for any other persons; or

(~~5~~e) Has without properly qualifying as herein provided represented himself as a licensee for the purpose of soliciting for or representing any business covered by this chapter; or

(~~6~~f) Has within the preceding five (5) years, been disbarred from the practice of law without reinstatement, been found guilty of, pled guilty to or been convicted of or received a withheld judgment for forgery, embezzlement, fraud, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, any theft offense, a crime involving moral turpitude, or violating any provision of this chapter; or

(~~7~~g) Had a license revoked, canceled or denied; or

~~(8) Is not a bona fide resident of this state; or~~

(~~9~~h) Owes outstanding, unpaid, delinquent and undisputed accounts or judgments.

(2) The director, after notice and hearing, may impose a civil penalty of not more than one thousand dollars ($1,000) for each violation upon any licensee found to have violated any provision of this chapter.

SECTION 7. That Section 26-2244, Idaho Code, be, and the same is hereby amended to read as follows:

26-2244. CEASE AND DESIST ORDERS, PENALTY. Whenever it appears to

the director that it is in the public interest, he may order any person to cease and desist from acts, practices, or omissions which constitute a violation of this chapter. Whenever, after notice and a hearing, the director finds that any person has violated any provision of this chapter, the director may impose a civil penalty of not more than one thousand dollars ($1,000) for each violation upon any person found to have violated any provision of this chapter.

SECTION 8. That Section 26-2250, Idaho Code, be, and the same is hereby amended to read as follows:

26-2250. FOREIGN ~~CORPORATIONS----PERMITS~~ PERMITTEES. ~~(a)--A--foreign--corporation--may,--upon-application-filed-with-the-department-of finance-of-the-state-of-Idaho,-be-issued-a-permit-to-do-business-as--a collection--agency--in--Idaho,-pursuant-to-chapter-22,-title-26,-Idaho Code,-if-such-corporation:~~ Notwithstanding any other provision of this chapter, if a permittee meets the conditions of subsection (1) of this section, it shall be exempt, as a foreign permittee, from the requirements of this chapter as provided in subsection (2) of this section.

(1) To be a foreign permittee, a collection agency must:

(~~i~~a) ~~is~~ Be qualified to do business in the state of Idaho~~,-and~~;

(~~ii~~b) ~~is~~ Be the holder of a valid permit or license to do business as a collection agency in the state where it has its principal place of business; ~~and-where-it-is-domiciled,-and~~

~~(iii)--directs-debtors-to-pay-accounts-directly--to--the--debtor's creditor,-and~~

~~(iv)--initiates--collection-activities-with-debtors-solely-through the-use-of-written-communication,-and~~

~~(v)--is-paid-its-collection-commission-directly--by--its--customer pursuant-to-periodic-billings-sent-to-its-customers.~~

~~(b)--An--application--filed-pursuant-to-this-act-shall-comply-with the-provisions-of-section-26-2224,-Idaho-Code,--and--section--26-2225, Idaho-Code.~~

(c) Certify in its application for a permit and each annual renewal that it will not solicit any creditor client which has its principal place of business in this state;

(d) Maintain a bond substantially similar, as determined by the director, to the bond required by subsection (b) of section 26-2232, Idaho Code;

(e) Maintain no agent or place of business in this state;

(f) Conduct its business in this state exclusively by mail or telecommunications; and

(g) Maintain its books and records in accordance with generally accepted accounting practices. The director or his duly authorized representatives may make an annual examination, or more frequent in the director's discretion, of the principal place of business of a foreign permittee outside the state of Idaho, and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such permittees. The actual cost of examination for the first annual examination each year and any investigation shall be paid to the director by each permittee so examined or investigated. The

director may maintain an action for the recovery of such costs against the foreign permittee.

(2) A foreign permittee is exempt from the requirements that it:

(a) Maintain either an agent or an office in this state;

(b) Maintain a trust account in a bank in this state; and

(c) Arrange that employees collecting accounts from debtors in this state be licensed by the director.

(~~c~~3) The director ~~of--the-department-of-finance-of-the-state-of Idaho~~ shall examine each application for a foreign permit hereunder in the manner provided in section 26-2229, Idaho Code, and if the applicant is found to be qualified under the provisions of this ~~act~~ chapter, shall cause a permit to be issued authorizing the applicant to conduct a business in this state ~~in-the-manner-set-forth-in-subsection--(a)--hereof~~ as a foreign permittee. An applicant who has been issued a foreign permit pursuant to this ~~act~~ chapter shall be known as a "~~limited~~ foreign permittee." If the director finds that the applicant does not qualify under the provisions of this ~~act~~ chapter, the application shall be denied.

(4) The failure of a permittee to comply with the provisions of this section shall constitute grounds for denial, revocation or suspension of a foreign permit pursuant to section 26-2235, Idaho Code.

SECTION 9. That Sections 26-2251 and 26-2252, Idaho Code, be, and the same are hereby repealed.

SECTION 10. That Chapter 22, Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 26-2251, Idaho Code, and to read as follows:

26-2251. CANCELLATION OF PERMIT. Any permittee or foreign permittee failing to apply in a timely manner for renewal of a permit shall have said permit cancelled on the day following the last day for renewal applications to be filed. Engaging in collection agency business with a cancelled permit shall be a violation of the provisions of this chapter. To restore a cancelled permit the fee shall be two hundred dollars ($200). A cancelled permit may be restored only before the expiration of six (6) months following the date of annual renewal.

Approved March 25, 1993.

CHAPTER 166
(H.B. No. 204)

AN ACT

RELATING TO POSSESSION OF A CONTROLLED SUBSTANCE OR DANGEROUS WEAPONS; AMENDING SECTION 18-2511, IDAHO CODE, TO PROVIDE THAT DELIVERY OR POSSESSION OR MANUFACTURE OF A CONTROLLED SUBSTANCE OR DANGEROUS WEAPON BY ANY INMATE OF A PENAL INSTITUTION OR JAIL IS A FELONY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-2511, Idaho Code, be, and the same is hereby amended to read as follows:

18-2511. POSSESSION OF A CONTROLLED SUBSTANCE OR DANGEROUS WEAPON. ~~It--is--unlawful--for-a~~Any inmate of a penal institution or a jail ~~to~~ who shall manufacture, deliver or possess a controlled substance ~~which-is-otherwise-illegal~~ or a dangerous weapon is guilty of a felony. ~~Violation--of--this-section-shall-be-punishable-by-a-fine-not exceeding-one-thousand-dollars-($1,000),-or-imprisonment-in-the-county jail-for-a-period-not-exceeding-one-(1)-year-or-in-the-state--penitentiary-not-exceeding-five-(5)-years,-or-by-both-such-fine-and-imprisonment.~~

Approved March 25, 1993.

CHAPTER 167
(H.B. No. 313)

AN ACT

RELATING TO ASSESSMENT OF REAL PROPERTY; AMENDING SECTION 63-307B, IDAHO CODE, TO PROVIDE THE OPTION OF DECLARING A MANUFACTURED HOME AS REAL PROPERTY; AND AMENDING CHAPTER 3, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-307C, IDAHO CODE, TO PROVIDE FOR REVERSAL OF THE DECLARATION WHICH ALLOWED A MANUFACTURED HOME TO BE TREATED AS REAL PROPERTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-307B, Idaho Code, be, and the same is hereby amended to read as follows:

63-307B. MANUFACTURED HOMES TO CONSTITUTE REAL PROPERTY. (1) A manufactured home, as defined in section 63-307A(a), Idaho Code, may constitute real property if the running gear is removed and:

(a) If the manufactured home becomes permanently affixed to a foundation on land which is owned or being purchased by the owner or purchaser of said manufactured home; and

(b) If the owner or purchaser of a manufactured home records with the county recorder in the county in which the manufactured home will be situated a ~~nonrevocable--option~~ statement of intent to declare the manufactured home as real property.

(~~c~~2) The exercise of said option shall require all county assessors to treat those manufactured homes whose owners or purchasers have exercised said option as any other site-built residence and shall permit lending institutions to treat said manufactured homes as real property or as any other residence.

(~~d~~3) ~~A--manufactured--home-may-be-considered-as-real-property-for taxation-and-financing-purposes-only,-and-not-for-any-other-purpose-or purposes-whatsoever~~ The form of the declaration shall be prescribed by the state tax commission. Any form used shall have attached to it the certificate of origin or the original title to the manufactured home

to allow a reversal of the declaration as provided in section 63-307C, Idaho Code.

SECTION 2. That Chapter 3, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-307C, Idaho Code, and to read as follows:

63-307C. REVERSAL OF DECLARATION WHICH TREATS A MANUFACTURED HOME AS REAL PROPERTY. (1) Once a manufactured home has been converted to real property under the provisions of section 63-307B, Idaho Code, it shall be deemed a fixture and an improvement to the real property to which it is affixed. Physical removal shall be prohibited without the consent of all persons or entities who, at the time or removal have an interest in the real property or title to any estate in the real property to which the manufactured home has been affixed. The homeowner shall obtain a title report from a title insurance company which shall establish the identity of those individuals or entities whose consent must be obtained. Consent to removal of the manufactured home shall not be required from the owners of rights of way, easements or owners of subsurface rights.

(2) Physical removal shall include, without limitation, the separation of the manufactured home from the foundation system, except for the temporary purposes of repair or improvement thereto.

(3) At least thirty (30) days before the manufactured home is to be removed, the homeowner shall give written notice of the intended removal to the county assessor in the county in which the real property is located. The county assessor shall require written evidence that the necessary consents have been obtained from those persons or entities identified in the title report as required by the provisions of subsection (1) of this section. In addition, removal shall be prohibited until the county treasurer has given written approval for the removal of the manufactured home by certifying that all taxes, due and payable, have been paid.

(4) The manufactured homeowner shall, within five (5) days of removal, make application for the issuance of a certificate of title for the manufactured home. Immediately upon issuance of a certificate of title, the manufactured home shall again become personal property.

(5) The state tax commission shall prescribe the forms to be used by the county assessor to reverse the option exercised under the provisions of section 63-307B, Idaho Code, which created the real property designation.

Approved March 25, 1993.

CHAPTER 168
(H.B. No. 328, As Amended)

AN ACT

RELATING TO STRATEGIC PLANNING AND PERFORMANCE MEASUREMENTS IN STATE GOVERNMENT; AMENDING CHAPTER 19, TITLE 67, IDAHO CODE, BY THE

ADDITION OF NEW SECTIONS 67-1901, 67-1902 AND 67-1903, IDAHO CODE, TO PROVIDE A STATEMENT OF PURPOSE, TO PROVIDE FOR A PROCESS FOR STRATEGIC PLANNING FOR STATE GOVERNMENT OPERATIONS, AND TO PROVIDE FOR PERFORMANCE PLANS BY STATE AGENCIES; AND AMENDING SECTION 67-3507, IDAHO CODE, TO PROVIDE FOR ANNUAL PERFORMANCE PLANS TO BE A PART OF THE EXECUTIVE BUDGET.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 19, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 67-1901, 67-1902 and 67-1903, Idaho Code, and to read as follows:

67-1901. PURPOSE. The purposes of sections 67-1901, 67-1902 and 67-1903, Idaho Code, and other applicable laws, are:

(1) To improve the confidence of our citizens in the capability of their state government by systematically holding state agencies accountable for achieving program results;

(2) To establish procedures for state agencies to set program goals, measure program performance against those goals, and report publicly on their progress;

(3) To improve program effectiveness and accountability by promoting a new focus on results, service quality and customer satisfaction;

(4) To help program managers improve service delivery by requiring that they plan to meet program objectives and by providing them with information about program results and service quality; and

(5) To improve oversight review and decision making by providing objective information, data and statistics on achieving statutory and other public policy objectives, and on the relative effectiveness and efficiency of program implementation and spending.

67-1902. STRATEGIC PLANS. (1) By not later than July 1, 1995, the administrative head of each state agency shall submit to the division of financial management a strategic plan for program activities. Each plan shall contain:

(a) A comprehensive mission statement covering the major functions and operations of the agency;

(b) General goals and objectives, including outcome related goals and objectives for the major functions and operations of the agency;

(c) A description of how the goals and objectives are to be achieved, together with a schedule of implementation;

(d) A description of how the performance goals, identified as required by section 67-1903, Idaho Code, shall be related to the general goals and objectives in the strategic plan;

(e) An identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(f) A description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

(2) The strategic plan shall cover a period of not less than five (5) years forward from the fiscal year in which it is submitted, and shall be updated and revised at least annually.

(3) The annual performance plan required by section 67-1903, Idaho Code, shall be consistent with the agency's strategic plan.

(4) When developing a strategic plan, an agency shall consult with the appropriate members of the legislature, and shall solicit and consider the views and suggestions of those persons and entities potentially affected by the plan.

(5) For the purposes of sections 67-1901, 67-1902 and 67-1903, Idaho Code, and other applicable laws, the term "agency" shall mean each department, office and institution, except elective offices, in the executive department of state government, as such are defined in section 67-3503, Idaho Code.

(6) Strategic plans are public records and are available to the public as provided in section 9-338, Idaho Code.

67-1903. ANNUAL PERFORMANCE PLANS. (1) For the fiscal year commencing July 1, 1995, and for each fiscal year thereafter, each agency shall, as a part of its budget request, prepare an annual performance plan covering each program activity set forth in the budget request of that agency. Such plan shall:

(a) Establish performance outcomes or results to define the level of performance to be achieved by a program activity;

(b) Express such goals in an objective, quantifiable and measurable form unless permitted an alternative form under subsection (2) of this section;

(c) Establish performance indicators to be used in assessing the relevant output measures, service levels and outcome measures of each program activity;

(d) Provide a basis for comparing actual program results with the established performance goals;

(e) Describe the means to be used to verify and validate measured values; and

(f) Review the success of achieving the previous fiscal year's performance goals.

(2) If an agency, after consultation with the administrator of the division of financial management, determines that it is not feasible to express the performance goals for a particular program activity in an objective and quantifiable form, the administrator may authorize an alternative form. Such alternative form shall:

(a) Include separate descriptive statements of:

(i) A minimally effective program, and

(ii) A successful program,

with sufficient precision and in such terms that will allow for an accurate, independent determination of whether the program activity's performance meets the criteria of either description; or

(b) State why it is unfeasible or impractical to express a performance goal in any form for the program activity.

(3) In preparing a comprehensive and informative plan under this section, an agency may aggregate, disaggregate or consolidate program activities, provided that any aggregation or consolidation does not

omit or minimize the significance of any program activity constituting a major function or operation of the agency.

(4) For the purposes of this section:

(a) "Outcome measure" refers to an assessment of the results of a program activity compared to its intended purpose;

(b) "Output measure" refers to the tabulation, calculation or recording of activity or effort and can be expressed in a quantitative or qualitative manner, with emphasis on the impact on the person or services receiving the end result;

(c) "Performance goal" means a target level of performance expressed as a tangible, measurable objective, against which actual achievement shall be compared, including a goal expressed as a quantitative standard, value or rate;

(d) "Performance indicator" refers to a particular value or characteristic used to measure output or outcome;

(e) "Program activity" means a specific activity or project as listed in the annual budget of the state of Idaho; and

(f) "Program evaluation" means an assessment, through quantifiable measurement and systematic analysis, of the manner and extent to which programs achieve intended objectives.

SECTION 2. That Section 67-3507, Idaho Code, be, and the same is hereby amended to read as follows:

67-3507. EXECUTIVE BUDGET. The executive budget document shall consist of the following ~~two (2)~~ three (3) parts:

(1) Part I of the executive budget document shall consist of a budget message by the governor which shall outline the financial plan of the executive department of the state government for the next fiscal year, describing in connection therewith the important features of the financial plan.

(2) Part II of the budget document shall present in detail for the next fiscal year, as minimum information to be included in Part II, items showing: estimates of agency needs based on the governor's recommendations, to meet the expenditure needs of the state from all statutory funds classified by agencies and showing the cost of each major program. Part II shall also set forth the governor's recommendations for the capital program. All funds, including federal and local funds and interaccount receipts received for any purpose, shall be accounted for in the budget.

(3) Part III of the budget document shall consist of the annual performance plans required in section 63-1903, Idaho Code.

Approved March 25, 1993.

CHAPTER 169
(H.B. No. 401)

AN ACT

APPROPRIATING MONEYS FOR THE HEALTH EDUCATION PROGRAMS FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Board of Regents of the University of Idaho and the State Board of Education the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. WOI VETERINARY EDUCATION:					
FROM:					
General Fund	$ 276,600	$733,900			$1,010,500
B. WAMI MEDICAL EDUCATION:					
FROM:					
General Fund	$ 439,500	$ 63,100	$12,900	$1,678,200	$2,193,700
Interagency Billing and Receipts Fund	9,800	2,000		97,100	108,900
TOTAL	$ 449,300	$ 65,100	$12,900	$1,775,300	$2,302,600
C. IDEP DENTAL EDUCATION:					
FROM:					
General Fund	$ 119,800	$ 12,200		$ 306,000	$ 438,000
Interagency Billing and Receipts Fund	51,000				51,000
TOTAL	$ 170,800	$ 12,200		$ 306,000	$ 489,000
D. WICHE/UNIVERSITY OF UTAH:					
FROM:					
General Fund				$ 507,000	$ 507,000
E. FAMILY PRACTICE RESIDENCIES:					
FROM:					
General Fund	$ 242,300	$ 15,700	$ 7,400	$ 265,400	$ 530,800
GRAND TOTAL	$1,139,000	$826,900	$20,300	$2,853,700	$4,839,900

Approved March 25, 1993.

CHAPTER 170
(H.B. No. 403)

AN ACT
EXPRESSING LEGISLATIVE INTENT; AND APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR AND INDUSTRIAL SERVICES FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is legislative intent that the expenditures for the Department of Labor and Industrial Services not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	$3,897,000
Operating Expenditures	1,123,300
Capital Outlay	211,100
TOTAL	$5,231,400
FROM:	
General Fund	$ 463,400
Electrical Fund	2,114,300
Plumbing Fund	1,119,500
Building Fund	663,400
Manufactured Housing Fund	51,900
Miscellaneous Revenue Fund	708,900
Federal Grant Fund	110,000
TOTAL	$5,231,400

SECTION 2. There is hereby appropriated to the Department of Labor and Industrial Services the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATION:				
FROM:				
General Fund	$ 49,100	$ 4,200		$ 53,300
Electrical Fund	188,300	13,700		202,000
Plumbing Fund	95,500	8,000		103,500
Building Fund	72,200	14,300		86,500
Miscellaneous Revenue Fund	76,900	29,100		106,000
TOTAL	$ 482,000	$ 69,300		$ 551,300
B. SAFETY COMPLIANCE:				
FROM:				
General Fund	$ 46,700	$ 4,600		$ 51,300
Electrical Fund	1,412,100	418,500	$ 81,700	1,912,300
Plumbing Fund	689,400	234,300	92,300	1,016,000
Building Fund	442,300	97,500	37,100	576,900
Manufactured Housing Fund	37,100	14,800		51,900
Federal Grant Fund	31,700	16,200		47,900
TOTAL	$2,659,300	$ 785,900	$211,100	$3,656,300
C. INDUSTRIAL RELATIONS AND SAFETY:				
FROM:				
General Fund	$ 279,300	$ 79,500		$ 358,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Miscellaneous Revenue Fund	436,900	166,000		602,900
Federal Grant Fund	39,500	22,600		62,100
TOTAL	$ 755,700	$ 268,100		$1,023,800
GRAND TOTAL	$3,897,000	$1,123,300	$211,100	$5,231,400

Approved March 25, 1993.

CHAPTER 171
(H.B. No. 414)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO STATE HISTORICAL SOCIETY FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Board of Education for the Idaho State Historical Society the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. HISTORICAL PRESERVATION AND EDUCATION:					
FROM:					
General Fund	$ 800,500	$234,100	$49,100	$ 2,500	$1,086,200
Miscellaneous Revenue Fund	52,400	122,400		20,800	195,600
Federal Grant Fund	398,000	92,400		40,000	530,400
TOTAL	$1,250,900	$448,900	$49,100	$63,300	$1,812,200
B. HISTORIC SITES MAINTENANCE AND INTERPRETATION:					
FROM:					
General Fund	$ 56,900	$ 37,800			$ 94,700
Miscellaneous Revenue Fund	101,300	35,300	$ 4,000		140,600
TOTAL	$ 158,200	$ 73,100	$ 4,000		$ 235,300
GRAND TOTAL	$1,409,100	$522,000	$53,100	$63,300	$2,047,500

Approved March 25, 1993.

CHAPTER 172
(H.B. No. 415)

AN ACT

APPROPRIATING MONEYS FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Human Rights Commission the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$276,400	$99,300	$2,500	$378,200
Federal Grant Fund	91,200	41,400		132,600
Miscellaneous Revenue Fund		6,400		6,400
TOTAL	$367,600	$147,100	$2,500	$517,200

Approved March 25, 1993.

CHAPTER 173
(H.B. No. 416)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO EDUCATIONAL PUBLIC BROADCASTING SYSTEM FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Board of Education for the Idaho Educational Public Broadcasting System the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$ 727,900	$ 530,700	$100,000	$1,358,600
Federal Grants Fund	680,000	624,500		1,304,500
TOTAL	$1,407,900	$1,155,200	$100,000	$2,663,100

Approved March 25, 1993.

CHAPTER 174
(H.B. No. 417)

AN ACT
APPROPRIATING MONEYS FOR THE STATE LIBRARY BOARD FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Board of Education for the State Library Board the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$1,335,100	$449,800	$155,000		$1,939,900
Federal Grant Fund	129,500	176,700		$669,900	976,100
Professional Services Fund		10,200	7,000	58,000	75,200
TOTAL	$1,464,600	$636,700	$162,000	$727,900	$2,991,200

Approved March 25, 1993.

CHAPTER 175
(H.B. No. 418)

AN ACT
EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 1994; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN COSTS RECOVERED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is legislative intent that the expenditures for the Attorney General not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	$6,951,800
Operating Expenditures	1,851,800
Capital Outlay	32,900
TOTAL	$8,836,500

FROM:	
General Fund	$3,273,800
Federal Grant Fund	207,200
Hazardous Waste Training, Emergency and Monitoring Fund	1,000,000
Professional Services Fund	4,355,500
TOTAL	$8,836,500

SECTION 2. There is hereby appropriated to the Attorney General the following amount, to be expended for designated programs according to designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. STATE LEGAL SERVICES:				
FROM:				
General Fund	$2,520,300	$ 370,600	$32,900	$2,923,800
Federal Grant Fund	180,300	26,900		207,200
Professional Services Fund	4,251,200	104,300		4,355,500
TOTAL	$6,951,800	$ 501,800	$32,900	$7,486,500
II. SPECIAL SERVICES LITIGATION:				
FROM:				
General Fund		$ 350,000		$ 350,000
Hazardous Waste Training, Emergency and Monitoring Fund		1,000,000		1,000,000
TOTAL		$1,350,000		$1,350,000
GRAND TOTAL	$6,951,800	$1,851,800	$32,900	$8,836,500

SECTION 3. It is legislative intent that an amount, not to exceed $1,000, of the amounts appropriated in Section 2, may be used at the discretion of the Attorney General to assist in defraying expenses relating to or resulting from the discharge of the Attorney General's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 4. It is legislative intent that any costs recovered in State of Idaho v. M.A. Hanna, that are funded by the moneys appropriated to the Attorney General from the Hazardous Waste Training, Emergency and Monitoring Fund.

Approved March 25, 1993.

CHAPTER 176
(S.B. No. 1039)

AN ACT

RELATING TO INSURANCE; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 47, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE APPLICABILITY AND SCOPE, TO PROVIDE FOR ESTABLISHMENT OF CLASSES OF BUSINESSES, TO PROVIDE RESTRICTIONS RELATING TO PREMIUM RATES, TO PROVIDE FOR RENEWABILITY OF COVERAGE, TO PROVIDE FOR AVAILABILITY OF COVERAGE, TO PROVIDE A NOTICE OF INTENT TO OPERATE AS A RISK-ASSUMING CARRIER OR A REINSURING CARRIER, TO PROVIDE AN APPLICATION TO BECOME A RISK-ASSUMING CARRIER, TO PROVIDE A SMALL EMPLOYER CARRIER REINSURANCE PROGRAM, TO PROVIDE FOR THE APPOINTMENT OF A HEALTH BENEFIT PLAN COMMITTEE, TO PROVIDE FOR WAIVER OF CERTAIN LAWS, TO PROVIDE FOR RULES AND REGULATIONS, TO PROVIDE MARKETING STANDARDS, TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE AN EFFECTIVE DATE AND APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 47, Title 41, Idaho Code, and to read as follows:

CHAPTER 47
SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT

41-4701. SHORT TITLE. This chapter shall be known and may be cited as the "Small Employer Health Insurance Availability Act."

41-4702. PURPOSE. The purpose and intent of this chapter is to promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of preexisting condition exclusions, to provide for the development of "basic" and "standard" health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.

This chapter is not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

41-4703. DEFINITIONS. As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the director that a small employer carrier is in compliance with the provisions of section 41-4706, Idaho Code, based upon the person's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit

plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Agent" means an agent as defined in section 41-1021, Idaho Code, or a broker as defined in section 41-1024, Idaho Code.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-4712, Idaho Code.

(6) "Board" means the board of directors of the program established pursuant to section 41-4711, Idaho Code.

(7) "Carrier" means any entity that provides health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, a self-funded health care plan, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(8) "Case characteristics" mean demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this chapter.

(9) "Class of business" means all or a separate grouping of small employers established pursuant to section 41-4705, Idaho Code.

(10) "Committee" means the health benefit plan committee created pursuant to section 41-4712, Idaho Code.

(11) "Control" shall be defined in the same manner as in section 41-3801(2), Idaho Code.

(12) "Dependent" means a spouse, and unmarried child under the age of nineteen (19) years, and unmarried child who is a full-time student under the age of twenty-three (23) years and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(13) "Director" means the director of the department of insurance of the state of Idaho.

(14) "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary or substitute basis.

(15) "Established geographic service area" means a geographic area, as approved by the director and based on the carrier's certifi-

cate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(16) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance.

(17) "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(18) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

(a) The individual meets each of the following:

(i) The individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse or divorce; and

(iii) The individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage.

(b) The individual is employed by an employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order.

(19) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(20) "Plan of operation" means the plan of operation of the program established pursuant to section 41-4711, Idaho Code.

(21) "Premium" means all moneys paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(22) "Program" means the Idaho small employer reinsurance program created in section 41-4711, Idaho Code.

(23) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:

(a) Medicare or medicaid; or

(b) Any other group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service corporation, or a fraternal benefit society, that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

(24) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(25) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to section 41-4711, Idaho Code.

(26) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to chapter 34, title 41, Idaho Code, hospital and professional service corporations, and chapter 39, title 41, Idaho Code, health maintenance organizations, to provide health care services to covered individuals.

(27) "Risk-assuming carrier" means a small employer carrier whose application is approved by the director pursuant to section 41-4710, Idaho Code.

(28) "Small employer" means any person, firm, corporation, partnership or association that is actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than forty-nine (49) eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

(29) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one (1) or more small employers in this state.

(30) "Standard health benefit plan" means a health benefit plan developed pursuant to section 41-4712, Idaho Code.

41-4704. APPLICABILITY AND SCOPE. To the extent permitted by federal law, the provisions of this chapter shall apply to any health benefit plan that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(1) Any portion of the premium or benefits is paid by or on behalf of the small employer;

(2) An eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium;

(3) Coverage for an eligible employee or a dependent is billed through a small employer, under a list billing or similar arrangement; or

(4) The health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 162, section 125 or section 106 of the United

States internal revenue code.

(5) (a) Except as provided in subsection (b) of this section, for the purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one (1) carrier and any restrictions or limitations imposed in this chapter shall apply as if all health benefit plans delivered or issued for delivery to small employers in this state by such affiliated carriers were issued by one (1) carrier.

(b) An affiliated carrier that is a health maintenance organization having a certificate of authority pursuant to the provisions of chapter 39, title 41, Idaho Code, may be considered to be a separate carrier for the purposes of this chapter.

(c) Unless otherwise authorized by the director, a small employer carrier shall not enter into one (1) or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to small employers in this state if such arrangements would result in less than fifty percent (50%) of the insurance obligation or risk for such health benefit plans being retained by the ceding carrier. The provisions of sections 41-510 and 41-511, Idaho Code, shall apply if a small employer carrier cedes or assumes all of the insurance obligation or risk with respect to one (1) or more health benefit plans delivered or issued for delivery to small employers in this state.

41-4705. ESTABLISHMENT OF CLASSES OF BUSINESS. (1) A small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs related to the following reasons:

(a) The small employer carrier uses more than one (1) type of system for the marketing and sale of health benefit plans to small employers;

(b) The small employer carrier has acquired a class of business from another small employer carrier; or

(c) The small employer carrier provides coverage to one (1) or more association groups that meet the requirements of section 41-2202, Idaho Code.

(2) A small employer carrier may establish up to nine (9) separate classes of business under the provisions of subsection (1) of this section.

(3) The director may establish regulations to provide for a period of transition in order for a small employer carrier to come into compliance with the provisions of subsection (2) of this section in the instance of acquisition of an additional class of business from another small employer carrier.

(4) The director may approve the establishment of additional classes of business upon application to the director and a finding by the director that such action would enhance the efficiency and fairness of the small employer marketplace.

41-4706. RESTRICTIONS RELATING TO PREMIUM RATES. (1) Premium rates for health benefit plans subject to the provisions of this chapter shall be subject to the provisions of the following provisions:

(a) The index rate for a rating period for any class of business

shall not exceed the index rate for any other class of business by more than twenty percent (20%).

(b) For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; and

(iii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claim experience, health status and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) Premium rates for health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by small employer carriers pursuant to section 41-4711, Idaho Code.

(f) In the case of health benefit plans delivered or issued for delivery prior to the effective date of this chapter, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (b) of this section for a period of three (3) years following the effective date of this chapter. In such case, the percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer car-

rier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(g) (i) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans; and

(ii) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(h) For the purposes of this subsection, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize such a network, provided that utilization of the restricted provider network results in substantial differences in claims costs.

(i) The small employer carrier shall not use case characteristics, other than age or gender, without prior approval of the director.

(j) A small employer carrier may utilize age as a case characteristic in establishing premium rates, provided that the same rating factor shall be applied to all individuals over the age of eighteen (18) years of age and under the age of thirty (30) years of age, and the same rating factor shall be applied on a quinquennial basis as to individuals thirty (30) years of age or older.

(k) The director may establish regulations to implement the provisions of this section and to assure that rating practices used by small employer carriers are consistent with the purposes of this chapter, including regulations that:

(i) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;

(ii) Prescribe the manner in which case characteristics may be used by small employer carriers; and

(iii) Prescribe the manner in which a small employer carrier is to demonstrate compliance with the provisions of this section, including requirements that a small employer carrier provide the director with actuarial certification as to such compliance.

(2) A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a

class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage since issue.

(3) The director may suspend for a specified period the application of subsection (1)(a) of this section as to the premium rates applicable to one (1) or more small employers included within a class of business of a small employer carrier for one (1) or more rating periods upon a filing by the small employer carrier and a finding by the director either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of all of the following:

(a) The extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or actual or expected variation in health status of the employees of the small employer and their dependents;

(b) The provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claim experience, that affect changes in premium rates;

(c) The provisions relating to renewability of policies and contracts; and

(d) The provisions relating to any preexisting condition provision.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the director annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with the provisions of this chapter and that the rating methods of the small employer carrier are actuarially sound. Such certification shall be in a form and manner, and shall contain such information, as specified by the director. A copy of the certification shall be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) of this section available to the director upon request. Except in cases of violations of the provisions of this chapter, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the director to persons outside of the department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

41-4707. RENEWABILITY OF COVERAGE. (1) A health benefit plan subject to the provisions of this chapter shall be renewable with respect to all eligible employees or dependents, at the option of the small employer, except in any of the following cases:

(a) Nonpayment of the required premiums;

(b) Fraud or misrepresentation of the small employer or, with respect to coverage of individual insureds, the insureds or their representatives;

(c) Noncompliance with the carrier's minimum participation requirements;

(d) Noncompliance with the carrier's employer contribution requirements;

(e) Repeated misuse of a provider network provision;

(f) The small employer carrier elects to nonrenew all of its health benefit plans delivered or issued for delivery to small employers in this state. In such a case the carrier shall:

(i) Provide advance notice of its decision under this paragraph to the director in each state in which it is licensed; and

(ii) Provide notice of the decision not to renew coverage to all affected small employers and to the director in each state in which an affected insured individual is known to reside at least one hundred eighty (180) days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the director under the provisions of this paragraph shall be provided at least three (3) working days prior to the notice to the affected small employers; or

(g) The director finds that the continuation of the coverage would:

(i) Not be in the best interests of the policyholders or certificate holders; or

(ii) Impair the carrier's ability to meet its contractual obligations.

In such instance the director shall assist affected small employers in finding replacement coverage.

(2) A small employer carrier that elects not to renew a health benefit plan under the provisions of subsection (1)(f) of this section shall be prohibited from writing new business in the small employer market in this state for a period of five (5) years from the date of notice to the director.

(3) In the case of a small employer carrier doing business in one (1) established geographic service area of the state, the rules set forth in this subsection shall apply only to the carrier's operations in that service area.

41-4708. AVAILABILITY OF COVERAGE. (1) (a) Every small employer carrier shall, as a condition of transacting business in this state with small employers, actively offer to small employers at least two (2) health benefit plans. One (1) health benefit plan offered by each small employer carrier shall be a basic health benefit plan and one (1) plan shall be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligi-

ble small employer that applies for either such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with the provisions of this chapter.

(ii) In the case of a small employer carrier that establishes more than one (1) class of business pursuant to the provisions of section 41-4705, Idaho Code, the small employer carrier shall maintain and issue to eligible small employers at least one (1) basic health benefit plan and at least one (1) standard health benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) The criteria are not related to the health status or claim experience of the small employer;

(C) The criteria are applied consistently to all small employers applying for coverage in the class of business; and

(D) The small employer carrier provides for the acceptance of all eligible small employers into one (1) or more classes of business.

The provisions of this paragraph shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer is eligible under the provisions of paragraph (b) of this section if it employed at least two (2) or more eligible employees within this state on at least fifty percent (50%) of its working days during the preceding calendar quarter.

(2) (a) A small employer carrier shall file with the director, in a format and manner prescribed by the director, the basic health benefit plans and the standard health benefit plans to be used by the carrier. A health benefit plan filed pursuant to the provisions of this paragraph may be used by a small employer carrier beginning thirty (30) days after it is filed unless the director disapproves its use.

(b) The director at any time may, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

(3) Health benefit plans covering small employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than:

(i) A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treat-

ment during the six (6) months immediately preceding the effective date of coverage;

(ii) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage; or

(iii) A pregnancy existing on the effective date of coverage.

(b) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than thirty (30) days prior to the effective date of the new coverage. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for the greater of twelve (12) months or for a twelve (12) month preexisting condition exclusion; provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed twelve (12) months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Except as provided in subsection (d)(iv) of this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(ii) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(iii) In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met.

(iv) A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group, except in the case of late enrollees as provided in paragraph (c) of this section.

(ii) A small employer carrier shall not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier shall not be required to offer coverage or accept applications pursuant to the provisions of subsection (1) of this section in the case of the following:

(i) To a small employer, where the small employer is not physically located in the carrier's established geographic service area;

(ii) To an employee, when the employee does not work or reside within the carrier's established geographic service area; or

(iii) Within an area where the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the director, that it will not have the capacity within its established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier that cannot offer coverage pursuant to the provisions of subsection (4)(a)(iii) of this section may not offer coverage in the applicable area to new cases of employer groups with more than forty-nine (49) eligible employees or to any small employer groups until the later of one hundred eighty (180) days following each such refusal or the date on which the carrier notifies the director that it has regained capacity to deliver services to small employer groups.

(5) A small employer carrier shall not be required to provide coverage to small employers pursuant to the provisions of subsection (1) of this section for any period of time for which the director determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) of this section would place the small employer carrier in a financially impaired condition.

(6) A small employer carrier shall not be required to comply with the provisions of this section until the director has approved or adopted the plan of operation as provided in section 41-4711, Idaho Code.

41-4709. NOTICE OF INTENT TO OPERATE AS A RISK-ASSUMING CARRIER OR A REINSURING CARRIER. (1) (a) Each small employer carrier shall notify the director within thirty (30) days of the effective date of this chapter of the carrier's intention to operate as a risk-assuming carrier or a reinsuring carrier. A small employer carrier seeking to operate as a risk-assuming carrier shall make an application pursuant to the provisions of section 41-4710, Idaho Code.

(b) The decision shall be binding for a five (5) year period except that the initial decision shall be binding for two (2) years. The director may permit a carrier to modify its decision at any time for good cause shown.

(c) The director shall establish an application process for small employer carriers seeking to change their status under the provi-

sions of this subsection.

(2) A reinsuring carrier that applies and is approved to operate as a risk-assuming carrier shall not be permitted to continue to reinsure any health benefit plan with the program. Such a carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured.

41-4710. APPLICATION TO BECOME A RISK-ASSUMING CARRIER. (1) A small employer carrier may apply to become a risk-assuming carrier by filing an application with the director in a form and manner prescribed by the director.

(2) The director shall consider the following factors in evaluating an application filed under the provisions of subsection (1) of this section:

(a) The carrier's financial condition;

(b) The carrier's history of rating and underwriting small employer groups;

(c) The carrier's commitment to market fairly to all small employers in the state or its established geographic service area, as applicable;

(d) The carrier's experience with managing the risk of small employer groups; and

(e) The extent to which a carrier has and will be able to maintain reinsurance pursuant to the provisions of subsection (4)(c) of section 41-4704, Idaho Code.

(3) The director shall provide public notice of an application by a small employer carrier to be a risk-assuming carrier and shall provide at least a sixty (60) day period for public comment prior to making a decision on the application. If the application is not acted upon within ninety (90) days of the receipt of the application by the director, the carrier may request a hearing.

(4) The director may rescind the approval granted to a risk-assuming carrier under the provisions of this section if the director finds that:

(a) The carrier's financial condition will no longer support the assumption of risk from issuing coverage to small employers in compliance with the provisions of section 41-4708, Idaho Code, without the protection afforded by the program;

(b) The carrier has failed to market fairly to all small employers in the state or its established geographic service area, as applicable; or

(c) The carrier has failed to provide coverage to eligible small employers as required in section 41-4708, Idaho Code.

(5) A small employer carrier electing to be a risk-assuming carrier shall not be subject to the provisions of section 41-4711, Idaho Code, except to the extent such small employer carrier is subject to assessment for additional funding pursuant to the provisions of subsection (12)(c) of section 41-4711, Idaho Code.

41-4711. SMALL EMPLOYER CARRIER REINSURANCE PROGRAM. (1) A reinsuring carrier shall be subject to the provisions of this section.

(2) There is hereby created a nonprofit entity to be known as the Idaho small employer health reinsurance program.

(3) (a) The program shall operate subject to the supervision and control of the board. Subject to the provisions of subsection (3)(b) of this section, the board shall consist of eight (8) members appointed by the director plus the director or his designated representative, who shall serve as an ex-officio member of the board.

(b) (i) In selecting the members of the board, the director shall include representatives of small employers and small employer carriers and such other individuals determined to be qualified by the director. At least five (5) of the members of the board shall be representatives of reinsuring carriers and shall be selected from individuals nominated by small employer carriers in this state pursuant to procedures and guidelines developed by the director.

(ii) In the event that the program becomes eligible for additional financing pursuant to the provisions of subsection (12)(c) of this section, the board shall be expanded to include two (2) additional members who shall be appointed by the director. In selecting the additional members of the board, the director shall choose individuals who represent carriers subject to assessment for additional financing identified in subsection (12)(c) of this section. The expansion of the board under the provisions of this subsection shall continue for the period that the program continues to be eligible for additional financing under the provisions of subsection (12)(c) of this section.

(c) The initial board members shall be appointed as follows: two (2) of the members to serve a term of two (2) years; three (3) of the members to serve a term of four (4) years; and three (3) of the members to serve a term of six (6) years. Subsequent board members shall serve for a term of three (3) years. A board member's term shall continue until his successor is appointed.

(d) A vacancy in the board shall be filled by the director. A board member may be removed by the director for cause.

(4) Within sixty (60) days of the effective date of this chapter, each small employer carrier shall make a filing with the director containing the carrier's earned health insurance premium derived from health benefit plans delivered or issued for delivery to small employers in this state in the previous calendar year.

(5) Within one hundred eighty (180) days after the appointment of the initial board, the board shall submit to the director a plan of operation and thereafter any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the program. The director may, after notice and hearing, approve the plan of operation if the director determines it to be suitable to assure the fair, reasonable and equitable administration of the program, and to provide for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation shall become effective upon written approval by the director.

(6) If the board fails to submit a suitable plan of operation within one hundred eighty (180) days after its appointment, the director shall, after notice and hearing, adopt and promulgate a temporary

plan of operation. The director shall approve the plan of operation submitted by the board, or adopt a temporary plan of operation if the board fails to submit a suitable plan, within one hundred eighty (180) days of the submission of the plan of operation by the board or within one hundred eighty (180) days of the expiration of the period of time for such submission by the board. The director shall amend or rescind any plan adopted under the provisions of this subsection at the time a plan of operation is submitted by the board and approved by the director.

(7) The plan of operation shall:

(a) Establish procedures for handling and accounting of program assets and moneys and for an annual fiscal reporting to the director;

(b) Establish procedures for selecting an administering carrier, which carrier shall be a properly licensed or authorized carrier in this state, and setting forth the powers and duties of the administering carrier;

(c) Establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program; and

(e) Provide for any additional matters necessary for the implementation and administration of the program.

(8) The program shall have the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition thereto, the program shall have the specific authority to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the director, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) Take any legal action necessary to avoid the payment of improper claims against the program;

(d) Define the health benefit plans for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter;

(e) Establish rules, conditions and procedures for reinsuring risks under the program;

(f) Establish actuarial functions as appropriate for the operation of the program;

(g) Assess carriers in accordance with the provisions of subsection (12) of this section, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of

the fiscal year;

(h) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program;

(i) Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for carriers and may be carried as admitted assets;

(9) A reinsuring carrier may reinsure with the program as provided for in this subsection:

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within sixty (60) days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of sixty (60) days following the commencement of the coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within sixty (60) days of the commencement of his coverage.

(d) (i) The program shall not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for such employee or dependent of five thousand dollars ($5,000) in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for ten percent (10%) of the next fifty thousand dollars ($50,000) of benefit payments during a calendar year and the program shall reinsure the remainder.

(ii) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the department of labor, bureau of labor statistics, unless the board proposes and the director approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one (1) or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A reinsuring carrier shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(10) (a) The board, as part of the plan of operation, shall

establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of base reinsurance premium rates which shall be multiplied by the factors set forth in subsection (10)(b) of this section to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the director, and shall be set at levels which reasonably approximate gross premiums and shall be charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under the provisions of this chapter.

(b) Premiums for the program shall be as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half (1.5) times the base reinsurance premium rate for the group established pursuant to the provisions of this paragraph.

(ii) An eligible employee or dependent may be reinsured for a rate that is five (5) times the base reinsurance premium rate for the individual established pursuant to the provisions of this paragraph.

(c) The board periodically shall review the methodology established under the provisions of paragraph (10)(a) of this section, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the director.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(11) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 41-4706, Idaho Code.

(12) (a) Prior to March 1 of each year, the board shall determine and report to the director the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(b) Any net loss for the year shall be recouped by assessments of carriers.

(c) (i) Prior to March 1 of each year, the board shall determine and file with the director an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(ii) The individual assessments shall be determined by multiplying the total program expenses by a fraction, the numerator of which shall be the carrier's total number of resident

insured persons, including spouses and dependents, under the carrier's health benefit plans in this state as reported in the carrier's annual report pursuant to subsection (16) of this section, and the denominator of which shall be the total number of resident insured persons, including spouses and dependents, insured under all health benefit plans in this state.

(iii) In determining the number of resident insured persons under the provisions of subsection (12)(c)(ii) of this section, the director shall insure that each person who is covered by a health benefit plan or who is reinsured with excess insurance is counted once with respect to any assessment. For that purpose, the director shall require each carrier that obtains reinsurance for its insureds and certificate holders to include in its count of insureds and certificate holders all insureds and certificate holders whose coverage is reinsured in whole or in part. The director shall allow a carrier who is a reinsurer to exclude from its number of insureds and its certificate holders those that have been counted by the primary insurer for the purpose of determining its assessment under the provisions of this section.

(d) If assessments exceed net losses of the program, the excess shall be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, "future losses" includes reserves for incurred but not reported claims.

(e) Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.

(f) The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

(g) A reinsuring carrier may seek from the director a deferment from all or part of an assessment imposed by the board. The director may defer all or part of the assessment of a reinsuring carrier if the director determines that the payment of the assessment would place the reinsuring carrier in a financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving the deferment shall remain liable to the program for the amount deferred and shall be prohibited from reinsuring any individuals or groups with the program until such time as it pays the assessments.

(13) Neither the participation in the program as reinsuring carriers, the establishment of rates, forms or procedures, nor any other joint or collective action required under the provisions of this chapter shall be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately.

(14) The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be

paid to agents for the sale of basic and standard health benefit plans. In establishing such standards, the board shall take into consideration the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide on-going service to the small employer, the levels of compensation currently used in the industry and the overall costs of coverage to small employers selecting these plans.

(15) The program shall be exempt from any and all taxes.

(16) Each carrier shall file with the director, in a form and manner to be prescribed to the director, an annual report. The report shall state the number of resident persons insured under the carrier's health benefit plan.

41-4712. HEALTH BENEFIT PLAN COMMITTEE. (1) The director shall appoint a health benefit plan committee. The committee shall be composed of representatives of carriers, small employers, health care providers and consumers.

(2) The committee shall recommend the form and level of coverages to be made available by small employer carriers pursuant to section 41-4708, Idaho Code, with an emphasis on making coverage available for preventive care.

(3) The committee shall recommend benefit levels, cost sharing levels, exclusions and limitations for the basic health benefit plan and the standard health benefit plan. The committee shall also design a basic health benefit plan and a standard health benefit plan which contain benefit and cost sharing levels that are consistent with the basic method of operation and the benefit plans of health maintenance organizations, including any restrictions imposed by federal law.

(a) The plans recommended by the committee may include cost containment features such as:

(i) Utilization review of health care services, including review of medical necessity of hospital and physician services;

(ii) Case management;

(iii) Selective contracting with hospitals, physicians and other health care providers;

(iv) Reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; and

(v) Other managed care provisions.

(b) The committee shall submit the health benefit plans described in paragraph (3)(a) of this section to the director for approval within one hundred eighty (180) days after the appointment of the committee.

(c) Small employer carriers desiring to issue a basic health benefit plan or a standard health benefit plan differing from the form and level of coverage developed by the committee and approved by the director shall submit such plan to the committee for review to insure that such proposed basic or standard plan is commensurate with the benefit levels, cost-sharing levels, exclusions, and limitations for such a plan as developed by the committee pursuant to the provisions of this section. The committee shall forward the proposed plan to the director with a recommendation for approval

or rejection.

41-4713. PERIODIC MARKET EVALUATION. The board, in consultation with members of the committee, shall study and report at least every three (3) years to the director on the effectiveness of this chapter. The report shall analyze the effectiveness of the chapter in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency and fairness of the small group health insurance marketplace. The report shall address whether carriers and agents are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of the chapter. The report may contain recommendations for market conduct or other regulatory standards or action.

41-4714. WAIVER OF CERTAIN STATE LAWS. No law requiring the coverage of a health care service or benefit, or requiring the reimbursement, utilization or inclusion of a specific category of licensed health care practitioner, shall apply to a basic and/or standard health benefit plan delivered or issued for delivery to small employers in this state pursuant to the provisions of this chapter.

41-4715. ADMINISTRATIVE PROCEDURES. The director shall promulgate rules and regulations in accordance with the provisions of chapter 52, title 67, Idaho Code, for the implementation and administration of the small employer health coverage reform act.

41-4716. STANDARDS TO ASSURE FAIR MARKETING. (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.

(2) (a) Except as provided in subsection (2)(b) of this section, no small employer carrier or agent shall, directly or indirectly, engage in the following activities:

(i) Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer;

(ii) Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(b) The provisions of subsection (2)(a) of this section shall not apply with respect to information provided by a small employer carrier or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (2)(b) of this section, no small employer carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(b) The provisions of subsection (a) of this section shall not apply with respect to a compensation arrangement that provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic or standard health benefit plan.

(5) No small employer carrier may terminate, fail to renew or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation or geographic location of the small employers placed by the agent with the small employer carrier.

(6) No small employer carrier or agent may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(8) The director may establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of the provisions of this section by a small employer carrier or an agent shall be an unfair trade practice pursuant to the provisions of section 41-1302, Idaho Code.

(b) If a small employer carrier enters into a contract, agreement or other arrangement with a third-party administrator to provide administrative, marketing or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to the provisions of this section as if it were a small employer carrier.

SECTION 2. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

SECTION 3. EFFECTIVE DATE. The provisions of this chapter shall be effective July 1, 1993. A small employer carrier shall not be

required to comply with the provisions of sections 41-4705, 41-4706 and 41-4707, Idaho Code, until January 1, 1994.

Approved March 26, 1993.

CHAPTER 177
(S.B. No. 1109)

AN ACT

RELATING TO APPORTIONMENT OF HIGHWAY FUNDS TO LOCAL UNITS OF GOVERNMENT; AMENDING SECTION 40-709, IDAHO CODE, TO PROVIDE THAT MONEYS PAID TO CITIES FROM THE HIGHWAY DISTRIBUTION ACCOUNT MAY BE EXPENDED TO MEET THE INTEREST AND SINKING FUND REQUIREMENTS FOR THE CURRENT YEAR ON UNPAID BONDS ISSUED BY THOSE CITIES FOR HIGHWAY AND BRIDGE PURPOSES, OR REFUNDING BONDS ISSUED TO TAKE UP THOSE BONDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-709, Idaho Code, be, and the same is hereby amended to read as follows:

40-709. APPORTIONMENT OF FUNDS FROM HIGHWAY DISTRIBUTION ACCOUNT TO LOCAL UNITS OF GOVERNMENT. From the moneys appropriated from the highway distribution account to local units of government, the appropriation shall be distributed as follows:

(1) Thirty per cent (30%) shall be apportioned among incorporated and specially chartered cities, in the same proportion as the population of the incorporated or specially chartered city bears to the total population of all the incorporated or specially chartered cities as shown by the last regular or special federal census.

(2) The remainder shall be apportioned:

(a) Ten per cent (10%) shall be divided equally among all counties of the state.

(b) Forty-five per cent (45%) shall be divided among the counties of the state in the proportion that the amount collected from motor vehicle registrations in each county during the last calendar year bears to the total amount of those collections in all counties in the state.

(c) Forty-five per cent (45%) shall be divided among the counties of the state in the proportion that the number of miles of improved highways in the county highway system of each county bears to the total number of miles of improved highways in the county highway systems of all counties in the state. The director is directed to certify to the state auditor, on or before January 1 of each year, the number of miles of improved highways in each county.

(3) The state auditor shall ascertain the sums set for the apportionment and remit to the local governments their share of the amount computed. The apportionment hereby made shall be remitted to the local governments not later than January 25, April 25, July 25, and October 25 of each year.

(4) Moneys paid to incorporated or specially chartered cities shall be expended by the governing bodies of those cities solely in the construction and maintenance of highways within their corporate limits and to meet the interest and sinking fund requirements for the current year on any unpaid bonds issued by those cities for highway and bridge purposes, or refunding bonds issued to take up those bonds.

(5) Moneys paid to the counties shall be placed by each county in a fund to be known as the county highway fund and the county shall apportion those funds as follows: To the interest and sinking fund of the county an amount as may be necessary to meet the interest and sinking fund requirements for the current year on any unpaid bonds issued by the county for highway and bridge purposes, or refunding bonds issued to take up those bonds. The county shall pay over to each highway district within the county the portion of the balance of the county highway fund as the following apportion shall apply:

(a) Ten per cent (10%) shall be divided equally among the county, if the county maintains any highways and the highway districts;

(b) Forty-five per cent (45%) shall be divided among the county, if the county maintains any highways, and the highway districts of the county in the proportion that the amount collected from motor vehicle registrations in each area designated during the last calendar year bears to the total amount of those collections in the entire county;

(c) Forty-five per cent (45%) shall be divided among the county, if the county maintains any highways, and the highway districts in the proportion that the number of miles of improved highways in the county and highway districts bear to the total number of miles of improved highways in the entire county highway system. The county shall also apportion as and when needed for disbursement for current expenses for the construction and maintenance of highways any further balance of the county highway fund to the highway and bridge fund of the county, and may expend all or any portion of the highways and bridge fund in the construction and maintenance of state highways within the county.

(6) Each highway district receiving an apportionment from the county highway fund shall apportion those funds as follows: To the interest and sinking fund of the district, an amount as may be necessary to meet the interest and sinking fund requirements for that year on any unpaid bonds issued by that district, and any balance of those funds shall be used for highway and bridge maintenance and construction. Each district may expend all or any portion of the balance of those funds in the construction and maintenance of state highways within the district.

(7) No part of the county highway fund or any apportionment from it shall ever be used for any purposes other than those provided in this section, except as specifically otherwise provided, and if, at the end of any fiscal year there shall remain an unexpended balance of those funds in the hands of the treasurer of any highway district, that balance shall be carried forward and retained and subsequently applied to the maintenance and construction of highways or the payment of bond interest and principal and sinking fund requirements.

Approved March 26, 1993.

CHAPTER 178
(S.B. No. 1140)

AN ACT

RELATING TO ELIGIBILITY OF MEMBERS OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR DISABILITY RETIREMENT; AMENDING SECTION 59-1352, IDAHO CODE, TO PROVIDE THAT A POLICE OFFICER MEMBER, OR A PAID FIREFIGHTER HIRED ON OR AFTER JULY 1, 1993, IS ELIGIBLE FOR DISABILITY RETIREMENT IF HE IS DISABLED ON OR AFTER THE FIRST DAY OF EMPLOYMENT AS A RESULT OF AN INJURY OR ILLNESS FROM AN OCCUPATIONAL CAUSE; AMENDING SECTION 72-1445, IDAHO CODE, TO PROVIDE THAT CHAPTER 13, TITLE 59, IDAHO CODE, SHALL GOVERN DISABILITY BENEFITS FOR A PAID FIREFIGHTER HIRED AFTER JULY 1, 1993 AND TO CORRECT A CODIFIER'S ERROR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-1352, Idaho Code, be, and the same is hereby amended to read as follows:

59-1352. ELIGIBILITY FOR DISABILITY RETIREMENT. (1) An active member who is not eligible for service retirement is eligible for disability retirement if he becomes disabled after at least ten (10) years of credited service including six (6) months of membership service.

(2) A police officer member, or a paid firefighter hired on or after July 1, 1993, who is not eligible for service retirement is eligible for disability retirement if the member becomes disabled, as provided in section 59-1302(12), Idaho Code, on or after the first day of employment as a result of bodily injury or disease from an occupational cause.

SECTION 2. That Section 72-1445, Idaho Code, be, and the same is hereby amended to read as follows:

72-1445. PENSION PAYMENT -- RETIREMENT OF FIREFIGHTER INCAPACITATED IN THE PERFORMANCE OF DUTY. (1) Any paid firefighter incapacitated by injury in the performance of duty, or by illness attributable wholly or partially to service as a paid firefighter, shall be retired so long as such disability shall continue in a degree which prevents efficient service, limited to a maximum of two (2) years, and during such disability shall be paid from the public employee retirement account the monthly retirement sum to which he would be entitled if he elected to retire, but in no event less than a monthly sum equal to: (a) sixty-five per cent (65%) of the average paid firefighter's salary or wage in this state if the incapacitated firefighter is an Option I firefighter; or, (b) sixty-five per cent (65%) of the said firefighter's average monthly salary or wage, based on his average final compensation, if the incapacitated firefighter is an Option II firefighter. The monthly sum shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.

Upon application of a firefighter or his or her department head

for a service disability retirement, and prior to said retirement, a medical examination of said firefighter shall be given by a medical committee consisting of a physician named by the public employee retirement system board, a physician named by the firefighter claiming benefits, and a third physician designated by the first two (2) physicians so named. If the medical committee, by a majority opinion certifies in writing, that: (1) the firefighter is physically incapacitated for the efficient performance of the duties as a paid firefighter, as defined under the provisions of subsection (G), section 72-1403, Idaho Code, in the service of the city or fire district, (2) such incapacity is likely to be permanent, (3) the member should be retired, and (4) there is medical evidence of probative value including reports of clinical findings (such as the individual's medical history, physical status examinations), laboratory findings, diagnosis and treatment prescribed and response to such treatment, the public employee retirement system board may approve such application for retirement as provided herein.

If the disabled firefighter is still retired at the conclusion of the two (2) year period, the public employee retirement system board shall determine whether the disability renders the disabled firefighter totally incapacitated. "Totally incapacitated" as used in this section means the inability to perform work in any remunerative employment. It is not necessary for a person to be absolutely helpless or entirely unable to do anything worthy of compensation to be considered totally incapacitated. If the person is so incapacitated that substantially all the avenues of gainful employment are reasonably closed to him, his condition is within the meaning of "totally incapacitated." In evaluating whether a person is totally incapacitated, the medical factor of permanent impairment and nonmedical factors such as age, sex, education, economic and social environment, and training and usable skills shall be considered. If the disabled firefighter is totally incapacitated, then payments shall continue at the rate prescribed in this section during the period of total incapacity. A medical committee may be summoned to determine total incapacity as provided above.

(2) If the disabled firefighter is less than totally incapacitated at the end of the two (2) year period, but has a disability which reduces his presumed ability to engage in gainful activity, payments shall be made to the disabled firefighter during the period of his disability as hereinafter provided. The board shall determine the percentage of disability suffered by the disabled firefighter as compared to the whole man. A medical committee, comprised as prescribed in this section, may be summoned to determine the percentage of disability suffered by the disabled firefighter. The disabled firefighter shall receive a disability benefit equal to the percentage that his disability bears to a totally incapacitated person.

(3) The public employee retirement system board shall provide and maintain disability benefits for all paid firefighters. Their benefits shall be as follows:

(a) For those paid firefighters who ~~are~~ were hired for the first time ~~on or after~~ between October 1, 1980~~,~~, and July 1, 1993, t~~T~~he benefits provided shall be at least equal to those provided to an Option II firefighter. The benefits shall be maintained only until

a paid firefighter is eligible for disability retirement under the provisions of chapter 13, title 59, Idaho Code. The costs for such benefits shall be paid from the appropriation made ~~by~~ in section 59-1394(1)(b), Idaho Code.

(b) For those paid firefighters hired after July 1, 1993, the benefits and eligibility therefor shall be as provided in chapter 13, title 59, Idaho Code.

Approved March 26, 1993.

CHAPTER 179
(H.B. No. 205)

AN ACT

RELATING TO ABANDONMENT OF A VULNERABLE ADULT; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1505A, IDAHO CODE, TO PROVIDE THE FELONY CRIME OF ABANDONING A VULNERABLE ADULT, TO DEFINE TERMS AND TO PROVIDE AN EXCEPTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 15, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-1505A, Idaho Code, and to read as follows:

18-1505A. ABANDONING A VULNERABLE ADULT. Any person who abandons a vulnerable adult, as that term is defined in section 39-5302, Idaho Code, in deliberate disregard of the vulnerable adult's safety or welfare, regardless of whether the vulnerable adult suffered physical harm from the act of abandonment, shall be guilty of a felony and shall be imprisoned in the state prison for a period not in excess of five (5) years, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. It shall not be a defense to prosecution under the provisions of this section that the perpetrator lacked the financial ability or means to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult.

As used in this section "abandon" means the desertion or willful forsaking of a vulnerable adult by any individual, caretaker as defined by subsection (2) of section 39-5302, Idaho Code, or entity which has assumed responsibility for the care of the vulnerable adult by contract, receipt of payment of care, any relationship arising from blood or marriage wherein the vulnerable adult has become the dependent of another or by order of a court of competent jurisdiction; provided that abandon shall not mean the termination of services to a vulnerable adult by a physician licensed under chapter 18, title 54, Idaho Code, or anyone under his direct supervision, where the physician determines, in the exercise of his professional judgment, that termination of such services is in the best interests of the patient.

Approved March 26, 1993.

CHAPTER 180
(S.B. No. 1013, As Amended)

AN ACT

RELATING TO COMMERCIAL DRIVER SCHOOLS; AMENDING SECTION 49-2104, IDAHO CODE, TO REQUIRE THAT ALL APPLICATIONS FOR LICENSES AND LICENSE RENEWALS SHALL BE MADE TO THE STATE DEPARTMENT OF EDUCATION, AND TO INCREASE THE ANNUAL FEES FOR DRIVER SCHOOL LICENSES AND FOR DRIVER INSTRUCTOR'S LICENSES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-2104, Idaho Code, be, and the same is hereby amended to read as follows:

49-2104. EXPIRATION AND RENEWAL OF LICENSES -- FEES. All licenses shall expire on the last day of the calendar year and may be renewed upon application to the state ~~board~~ department of education as prescribed by ~~its~~ regulations of the state board of education. Each application for an original or renewal school license shall be accompanied by a fee of ~~twenty-five~~ fifty dollars (~~$25.00~~$50.00), and each application for an original or renewal instructor's license shall be accompanied by a fee of ~~five~~ ten dollars (~~$5~~$10.00). Fees shall be payable to the treasurer of the state and credited to the driver training account. No license fees shall be refunded in the event any license is rejected, suspended, or revoked.

Approved March 26, 1993.

CHAPTER 181
(S.B. No. 1016)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1306, IDAHO CODE, TO PROVIDE AN ALTERNATE BASE PERIOD FOR CLAIMANTS WITH A TEMPORARY TOTAL DISABILITY; AND AMENDING SECTION 72-1369, IDAHO CODE, TO PROVIDE THAT OVERPAYMENTS CAUSED BY AN EMPLOYER'S MISREPORTING OF WAGES MAY BE WAIVED IF THE CLAIMANT COULD NOT REASONABLY HAVE BEEN EXPECTED TO RECOGNIZE THE ERROR, AND TO CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1306, Idaho Code, be, and the same is hereby amended to read as follows:

72-1306. BASE PERIOD. (a) The term "base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the beginning of a benefit year.

(b) The alternate base period is the first four (4) of the last

five (5) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. To use the alternate base period, a claimant must file within three (3) years of the beginning of the temporary total disability, and no longer than six (6) months after the end of the temporary total disability.

SECTION 2. That Section 72-1369, Idaho Code, be, and the same is hereby amended to read as follows:

72-1369. OVERPAYMENTS, COLLECTION AND WAIVER. (a) Any person who received benefits to which he was not entitled under the provisions of this act or under an unemployment compensation or unemployment insurance law of any state or of the federal government shall be liable to repay said benefits and said benefits shall, for the purpose of this act, be considered to be overpayments. Said overpayments shall be repaid as follows:

(1) Any overpayment which has not been repaid may be collected without interest by civil action brought in the name of the state of Idaho, and such civil actions may be commenced within the time periods specified in this section without regard to any other statute of limitations;

(2) A. Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, which have not been repaid or collected, may, at the discretion of the director or his authorized representative, be deducted from any future benefits payable to said claimant under the provisions of this act;

B. Overpayments resulting from a false statement, misrepresentation, or concealment of a material fact by the claimant which have not been repaid or collected shall be deducted from any benefits payable at any time in the future, without regard to any statute of limitation and such overpayments not recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible;

C. A civil action, filed pursuant to subsection (1) of this section, to collect overpayments resulting from a false statement, misrepresentation, or concealment of a material fact by the claimant must be commenced within eight (8) years from the date of the final determination establishing liability to repay;

(3) Overpayments, other than those resulting from a false statement, misrepresentation or failure to report a material fact, not recovered within five (5) years from the date of the final determination establishing liability to repay shall be deemed uncollectible, and a civil action filed pursuant to subsection (1) of this section, to collect such overpayments must be commenced within the same five (5) year time period;

(4) The director or his authorized representative may waive the requirement to repay such overpayment described in ~~paragraph~~ subsection (3) ~~above~~ of this section if such payments were made solely as a result of department error or inadvertence, and made

to a claimant who had no way of knowing that he was receiving benefits to which he was not entitled or if such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period, and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported.

(b) Neither the director nor any of his agents or employees shall be liable for benefits paid to persons not entitled to the same under the provisions of this act if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

Approved March 26, 1993.

CHAPTER 182
(S.B. No. 1023)

AN ACT

RELATING TO FEES FOR REGISTRATION OF INTERSTATE MOTOR CARRIERS; AMENDING SECTION 61-812, IDAHO CODE, TO PROVIDE THAT EXISTING CHARGES FOR REGISTRATION OF INTERSTATE MOTOR CARRIER AUTHORITY SHALL BE LIMITED AS PRESCRIBED BY FEDERAL LAW; AND AMENDING SECTION 61-815A, IDAHO CODE, TO REPLACE OBSOLETE SPECIFIC REFERENCES TO FEDERAL LAW WITH GENERAL REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 61-812, Idaho Code, be, and the same is hereby amended to read as follows:

61-812. FEES CONNECTED WITH ADMINISTRATION OF LAW. The commission shall charge and collect the following fees and none other, in the administration of this chapter:

a. Intrastate carriers.

Application for a permit shall be accompanied by an application fee of $150.00
Application for transfer of a permit 150.00
Application for the issuance of a duplicate permit 10.00
Application for permit reinstatement 100.00
Application for permit suspension 25.00
Application for temporary permit 50.00
Annual regulatory fee per power unit of each common or contract motor carrier 21.00
Annual regulatory fee per power unit of each private motor carrier 7.00

The commission shall charge and collect reasonable fees for copies of papers and records as established by rule or general order of the commission.

b. Interstate carriers. (1) Except as provided in paragraph (2) of this subsection, the following fees shall be charged and collected:

~~Initial registration of interstate carrier authority or exemption ..... $25.00~~
~~Annual renewal of interstate carrier authority or exemption for carrier with currently effective registration of authority or exemption ..... 10.00~~
~~Name change for interstate carrier registered with commission ..... 10.00~~
For ~~each identification issued by the state of Idaho~~ proof of insurance for each vehicle operated ~~under the authority of~~ by the motor carrier not to exceed 10.00
Lesser amounts for each vehicle may be set by rule or general order of the commission.

(2) If authorized by the United States pursuant to its authority under the commerce clause of the constitution of the United States, for the initial registration or the annual renewal of the registration of interstate carrier authority or exemption from interstate authority 25.00

SECTION 2. That Section 61-815A, Idaho Code, be, and the same is hereby amended to read as follows:

61-815A. BASE STATE AGREEMENTS. Pursuant to ~~public law 89-170, as amended~~ federal law, the Idaho public utilities commission is hereby authorized to enter into reciprocal agreements with the regulatory agencies of other states having jurisdiction and authority over motor carriers to provide for base state agreements in which the registration of interstate carriers operating in participating states may be accomplished by registration in one (1) base state. Carriers electing to register under base state agreements shall be subject to the jurisdiction and authority of the Idaho public utilities commission to the same extent as they would if they did not participate in the base state agreement, except, in lieu of the filing fees or regulatory fees that would otherwise be collected pursuant to this chapter, the fees authorized by ~~public law 89-170, or subsequent act of congress~~ federal law, or such lesser fees as the participating states agree to, may be collected, and the base state may require further filings of certificates of insurance, surety bonds, et cetera, to show the carrier's qualifications to operate. Participating carriers must register their authority directly with the public utilities commission and not with other state or local agencies.

Approved March 26, 1993.

CHAPTER 183
(S.B. No. 1097)

AN ACT

RELATING TO VOCATIONAL REHABILITATION; AMENDING SECTION 33-2301, IDAHO CODE, TO PROVIDE ACCEPTANCE OF THE REHABILITATION ACT AMENDMENTS OF 1992 BY THE STATE OF IDAHO.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-2301, Idaho Code, be, and the same is hereby amended to read as follows:

33-2301. ACCEPTANCE OF FEDERAL ACTS. The state of Idaho hereby renews its acceptance of the provisions and benefits of the act of Congress, entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, as amended by P.L. 113, 78th Congress, by P.L. 565, 83rd Congress, by P.L. 89-333, 89th Congress, by P.L. 90-99, 90th Congress, and by P.L. 90-391, 90th Congress, and further accepts the acts of Congress, entitled "The Rehabilitation Act of 1973," P.L. 93-112, 93rd Congress, and "The Rehabilitation Act Amendments of 1974," P.L. 93-516, 93rd Congress, and "The Rehabilitation Act Amendments of 1978," P.L. 95-602, 95th Congress, and "The Rehabilitation Act Amendments of 1984," P.L. 98-221, 98th Congress, "The Rehabilitation Act Amendments of 1986," P.L. 99-506, 99th Congress, and "The Rehabilitation Act Amendments of 1992," P.L. 102-569, 102nd Congress, and will observe and comply with all requirements of such acts.

Approved March 26, 1993.

CHAPTER 184
(S.B. No. 1115)

AN ACT

RELATING TO IMPRISONMENT AND THE EFFECT ON CIVIL RIGHTS AND OFFICES; AMENDING SECTION 18-310, IDAHO CODE, TO EXPAND THE EFFECTS OF IMPRISONMENT ON CIVIL RIGHTS AND OFFICES TO THE CRIME OF UNLAWFUL POSSESSION OF A FIREARM AND TO THE CRIME OF TRAFFICKING.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-310, Idaho Code, be, and the same is hereby amended to read as follows:

18-310. IMPRISONMENT -- EFFECT ON CIVIL RIGHTS AND OFFICES. (1) A sentence of custody to the Idaho state board of correction for any time less than for life suspends all the civil rights of the person so sentenced including the right to refuse treatment authorized by the sentencing court, and forfeits all public offices and all private trusts, authority or power during such imprisonment: provided that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation, except the right to ship, transport, possess or receive a firearm, and the right to refuse treatment authorized by the sentencing court.

(2) Upon the final discharge of a person convicted of any Idaho felony except treason and those enumerated in paragraph (a) of this subsection with regard to the right to ship, transport, possess or receive a firearm, a person shall be restored the full rights of citizenship. As used in this subsection, "final discharge" means satisfac-

tory completion of imprisonment, probation and parole as the case may be.

(a) Any person convicted of aggravated assault (18-905, Idaho Code), aggravated battery (18-907, Idaho Code), assault with intent to commit a serious felony (18-909, Idaho Code), battery with intent to commit a serious felony (18-911, Idaho Code), burglary (18-1401, Idaho Code), lewd conduct with a minor or child under sixteen (18-1508(3), (4), (5) and (6), Idaho Code), sexual abuse of a child under sixteen (18-1506, Idaho Code), felonious rescuing prisoners (18-2501, Idaho Code), escape by one charged with, convicted of or on probation for a felony (18-2505, Idaho Code), unlawful possession of a firearm (18-3316, Idaho Code), degrees of murder (18-4003, Idaho Code), voluntary manslaughter (18-4006(1), Idaho Code), assault with intent to murder (18-4015, Idaho Code), administering poison with intent to kill (18-4014, Idaho Code), kidnapping (18-4501, Idaho Code), mayhem (18-5001, Idaho Code), rape (18-6101, Idaho Code), male rape (18-6108, Idaho Code), robbery (18-6501, Idaho Code), ritualized abuse of a child (18-1506A, Idaho Code), cannibalism (18-5003, Idaho Code), felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit substance (37-2732, Idaho Code), trafficking (37-2732B, Idaho Code), or any person convicted of an attempt (18-306, Idaho Code), conspiracy (18-1701, Idaho Code), or solicitation (18-2001, Idaho Code), to commit any of the crimes described in subsection (2)(a) of this section.

(b) The provisions of this subsection shall apply only to those persons convicted of the enumerated felonies in paragraph (a) of this subsection on or after July 1, 1991.

(3) A person not restored to the civil right to ship, transport, possess or receive a firearm may make application to the commission of pardons and parole to restore the civil right to ship, transport, possess or receive a firearm. The commission shall not accept any such application until five (5) years after the date of final discharge. The commission shall conduct the proceeding upon such application pursuant to the rules and regulations adopted in accordance with the law. The commission shall not restore the right to ship, transport, possess or receive a firearm to any person convicted of murder in the first degree (18-4003, Idaho Code), murder in the second degree (18-4003, Idaho Code), or any felony enumerated in paragraph (a) of this subsection, upon which the sentence was enhanced for the use of a firearm during the commission of said felony.

Approved March 26, 1993.

CHAPTER 185
(S.B. No. 1143)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1911, IDAHO CODE, TO PROVIDE THAT THE INTEREST RATE ON LIFE INSURANCE POLICY REINSTATE-

MENTS SHALL BE EIGHT PER CENT PER ANNUM COMPOUNDED ANNUALLY TO CONFORM WITH SECTION 41-1909, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1911, Idaho Code, be, and the same is hereby amended to read as follows:

41-1911. REINSTATEMENT. There shall be a provision that unless:

(1) The policy has been surrendered for its cash surrender value, or

(2) Its cash surrender value has been exhausted, or

(3) The paid-up term insurance, if any, has expired~~.~~, t~~T~~he policy will be reinstated at any time within three (3) years (or two (2) years in the case of industrial life insurance policies) from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears ~~and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all~~ with interest at a rate not exceeding ~~six~~ eight per cent (6~~8~~%) per annum compounded annually and the payment or reinstatement of any other policy indebtedness with interest at a rate not exceeding the applicable policy loan rate or rates determined in accordance with the policy's provisions.

Approved March 26, 1993.

CHAPTER 186
(S.B. No. 1149, As Amended)

AN ACT

RELATING TO LIBRARIES; REPEALING SECTIONS 33-2601 THROUGH 33-2608, IDAHO CODE; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2601, IDAHO CODE, TO PROVIDE POLICY; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2602, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2603, IDAHO CODE, TO PROVIDE THAT CITIES MAY ESTABLISH TAX SUPPORTED LIBRARIES; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2604, IDAHO CODE, TO PROVIDE FOR A BOARD OF TRUSTEES; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2605, IDAHO CODE, TO PROVIDE FOR VACANCIES AND REMOVALS OF TRUSTEES; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2606, IDAHO CODE, TO PROVIDE FOR MEETINGS OF THE BOARD OF TRUSTEES; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2607, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE BOARD OF TRUSTEES; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2608, IDAHO CODE, TO PROVIDE FOR A LIBRARY DIRECTOR AND OTHER EMPLOYEES; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2609, IDAHO

CODE, TO PROVIDE FOR ANNUAL APPROPRIATIONS; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2610, IDAHO CODE, TO PROVIDE FOR DONATIONS; AMENDING CHAPTER 26, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2611, IDAHO CODE, TO PROVIDE A REPORT OF THE TRUSTEES; AND AMENDING SECTIONS 33-2609, 33-2610, 33-2611, 33-2612, 33-2613, 33-2614, 33-2615, 33-2616 AND 33-2617, IDAHO CODE, TO REDESIGNATE THE SECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 33-2601 through 33-2608, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2601, Idaho Code, and to read as follows:

33-2601. POLICY. It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of free library service for all the people in Idaho. It is the purpose of this act to assure an informed electorate by enabling the provision of free local library service, in the present and in the future, to children in their formative years and to adults for their continuing education. To carry out the purpose of this act, an independent, nonpartisan board shall govern the library.

Every library established in this chapter shall be forever free for the use of the residents of the city, always subject to such reasonable rules and regulations as the library board may find necessary to adopt.

SECTION 3. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2602, Idaho Code, and to read as follows:

33-2602. DEFINITIONS. Unless a different meaning plainly is required in this chapter:

(1) "Nonpartisan" means not controlled or influenced by any single political party.

(2) "Board" means the group of trustees who manage the library.

(3) "Mayor" means the elected chief municipal officer of a city.

(4) "City manager" means a person appointed as chief municipal administrator by a city council.

(5) "City council" means the legislative body of a city.

SECTION 4. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2603, Idaho Code, and to read as follows:

33-2603. CITIES MAY ESTABLISH TAX SUPPORTED LIBRARIES. The city

council of every city shall have power to establish a public library, and for such purpose may annually levy and cause to be collected a tax up to but not exceeding one-tenth percent (.10%) of market value for assessment purposes or fund a library out of allocations from the city's general fund. All such moneys shall be kept by the city treasurer separate and apart from other moneys of the city and be used exclusively for library purposes, provided that every city shall have power to contract for specified library service from an existing library, or become part of an existing library district, following the procedure outlined in section 33-2709, Idaho Code.

SECTION 5. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2604, Idaho Code, and to read as follows:

33-2604. BOARD OF TRUSTEES -- APPOINTMENT -- TERM OF OFFICE -- COMPENSATION. For the government of such library there shall be a board of five (5) library trustees appointed by the mayor and council pursuant to section 50-210, Idaho Code, from among city residents. If the city government is organized pursuant to sections 50-801 through 50-813, Idaho Code, the city manager and the council shall appoint the board of trustees.

Appointment to the board shall be made solely upon consideration of the ability of such appointees to serve the interests of the people, without regard to sex, age, race, nationality, religion, disability or political affiliation. A member of the city council shall not be one (1) of the five (5) appointed trustees of the library board, but each year the council shall appoint one (1) of its members to be a liaison to the board, without voting rights.

The initial appointment of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Subsequent appointments shall be made for five (5) years from the date of appointment, and until their successors are appointed.

Members of the board shall serve without salary but may receive their actual and necessary budgeted expenses while engaged in authorized business of the library.

SECTION 6. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2605, Idaho Code, and to read as follows:

33-2605. BOARD OF TRUSTEES -- VACANCIES -- REMOVAL. The board shall report all vacancies to the council within five (5) working days. All such appointments shall be made in the same manner as appointments are originally made. Appointments to complete an unexpired term shall be for the remainder of the term only.

Any trustee may be removed by the city council by the unanimous vote of all of its members.

SECTION 7. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be

known and designated as Section 33-2606, Idaho Code, and to read as follows:

33-2606. BOARD OF TRUSTEES -- MEETINGS. The board of trustees shall meet at least once in each quarter unless required by city ordinance to meet more frequently. One (1) of the meetings shall be designated as the annual meeting. The purposes of the annual meeting are to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. Special meetings may be held from time to time as the board may determine, but written notice thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) voting members, but a smaller number may adjourn. All library board meetings are to be held pursuant to the open meeting law, sections 67-2340 through 67-2344, Idaho Code.

SECTION 8. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2607, Idaho Code, and to read as follows:

33-2607. POWERS AND DUTIES OF TRUSTEES. In addition to the powers elsewhere contained in this chapter and notwithstanding the provisions of title 50, Idaho Code, the board of trustees of each city library shall have the following powers and duties:

(1) To establish bylaws for its own governance;

(2) To establish policies and rules of use for the governance of the library or libraries under its control; to exclude from the use of the library any and all persons who violate such rules;

(3) To establish, locate, maintain and have custody of libraries to serve the city, and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for library service;

(4) With the approval of the city:

(a) To acquire real property by purchase, gift, devise, lease or otherwise;

(b) To own and hold real and personal property and to construct buildings for the use and purposes of the library;

(c) To sell, exchange or otherwise dispose of real or personal property when no longer required by the library; and

(d) To insure the real and personal property of the library;

(5) To prepare and adopt a budget for review and approval by the city council;

(6) To control the expenditures of money budgeted for the library;

(7) To accept or decline gifts of money or personal property, in accordance with library policy, and under such terms as may be a condition of the gift;

(8) To hire, supervise and evaluate the library director;

(9) To establish policies for the purchase and distribution of library materials;

(10) To attend all meetings of the board of trustees;

(11) To maintain legal records of all board business;

(12) To exercise such other powers, not inconsistent with law, necessary for the orderly and efficient management of the library.

SECTION 9. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2608, Idaho Code, and to read as follows:

33-2608. LIBRARY DIRECTOR -- DUTIES -- OTHER EMPLOYEES. The board of trustees of each city library shall appoint the library director, who shall serve at the pleasure of the board. The library director shall advise the board, implement policy set by the board, supervise all library staff and shall acquire library materials, equipment and supplies. The library director shall attend all board meetings but shall not vote.

With the recommendation of the library director, the board shall hire other employees as may be necessary for the operation of the library in accordance with city policies and procedures. These employees shall be employees of the city and subject to the city's personnel policies and classifications unless otherwise provided by city ordinance.

SECTION 10. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2609, Idaho Code, and to read as follows:

33-2609. ANNUAL APPROPRIATIONS -- CONTROL OF EXPENDITURES. The board shall prepare and adopt an annual budget, stating anticipated revenues and expenditures, indicating what support and maintenance of the library will be required for review and approval by the city council for the ensuing year.

All funds for the library shall be in the custody of the city treasurer unless otherwise provided by city ordinance, and shall be used only for library purposes. The board shall have control of library expenditures. Money shall be paid for library purposes, only upon properly authenticated vouchers of the board of trustees. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated for library purposes. The board may hold a separate checking account to be used to pay petty expenses of the library. This account shall be audited along with other library funds.

SECTION 11. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto a NEW SECTION, to be known and designated as Section 33-2610, Idaho Code, and to read as follows:

33-2610. DONATIONS. Donations or gifts for the benefit of the library shall be budgeted along with other library accounts and shall be used only for library purposes. Money or other funds which are donated or given to the library may be expended by the board of trustees only in accordance with the city budget process.

SECTION 12. That Chapter 26, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-2611, Idaho Code, and to read as follows:

33-2611. REPORTS OF TRUSTEES. The board of trustees shall annually, not later than the first day of January, file with the state library board a report of the operations of the library for the fiscal year just ended. The report shall be of such form and contain such information as the state library board may require, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported. The board shall also report to the city council and mayor as required in section 50-210, Idaho Code.

SECTION 13. That Section 33-2609, Idaho Code, be, and the same is hereby amended to read as follows:

33-2609~~10~~12. REGIONAL LIBRARY SYSTEMS -- PURPOSE -- BOUNDARIES. It is the purpose of this act to provide a method by which the library boards which govern Idaho's libraries, now or hereafter established in accordance with the Idaho Code, may contract to form regional library systems, in order to provide improved library and information services for residents of a multi-county region. The boundaries for library regions in Idaho shall be established by the Idaho state library board.

SECTION 14. That Section 33-2610, Idaho Code, be, and the same is hereby amended to read as follows:

33-2610~~2~~3. DEFINITIONS. As used in this act, unless the context otherwise requires:

(a) "Library board" means the five (5) citizens appointed, or elected, to govern a public library, a school community library, or a library district, in accordance with chapters 26 and 27, title 33, Idaho Code.

(b) "Participating board" or "participating library" means a board or library or district which is cooperating and participating in a regional library system.

(c) "Region" means that geographic area, with boundaries established by the state library board, wherein library units are encouraged to work together.

(d) "Regional system" means two (2) or more library boards formally contracting a system approved by the state library board, officially designated as a regional library system under this act, and therein working together in specific efforts to extend and improve library services to their resident constituents.

(e) "System board" means the governing board comprised of representatives of library boards in a regional system, and which is authorized to direct and plan library service for a regional system to the extent and in the manner provided by this act.

SECTION 15. That Section 33-2611, Idaho Code, be, and the same is hereby amended to read as follows:

33-261~~1~~4. PETITION FOR ESTABLISHMENT. Any two (2) or more library boards may petition the state library board for the establishment of a regional system. Such petition shall be prepared in cooperation with the state librarian, on forms provided by the state library, and shall include but shall not be limited to the following information:

(a) A statement of purpose and an outline of the proposed program of the regional system.

(b) A list of the participating libraries, with a listing of the current tax levy and budget of each such participant; the names and addresses of the members of each library board, and a letter or resolution from each such board regarding participation in the regional system.

(c) A list of the counties in the geographic region as a whole, the number of persons who are within taxing districts supporting existing libraries, and the number of persons outside such districts but within a county in the region, and thus potentially eligible for service from the regional system being established.

(d) Proposed number of persons to be on the initial system board of directors.

(e) Proposed headquarters for the regional system, accompanied by a copy of a resolution by the governing authority for that library approving its designation as headquarters and, if a member of the staff of the headquarters is to be the administrator of the system, including approval of such designation.

The state library board shall consider any petition presented to it as provided in this act, and if it approves such petition it shall adopt a resolution officially designating such particular regional library system, describing the territory thereof, and designating the headquarters and the initial number of directors for the system board.

SECTION 16. That Section 33-2612, Idaho Code, be, and the same is hereby amended to read as follows:

33-261~~2~~5. SYSTEM BOARD OF DIRECTORS. Each regional system shall be governed by a board of directors, to be selected by and from the governing boards of the participating libraries.

Initially, as the system is formed, each participating library shall be entitled to one (1) representative on the system board, and those libraries legally serving a population base of more than ten thousand (10,000) shall also be entitled to a second representative.

Within two (2) weeks after receiving notice of approval of a petition for establishment, as provided for under this act, the board of each participating library shall select its representative or representatives, and certify the names and addresses of such representatives to the state librarian.

As additional libraries, now or hereafter established, petition to join the system, the board shall not exceed twenty-five (25) in number. When the board members total twenty-five (25), or earlier with the unanimous agreement of the participating boards, the system board shall develop a plan for equitable rotation of trustees, while retaining representation from a library in each county. The designated headquarters for the system shall always have representation on the board.

At their first meeting the members of the system board shall

divide themselves by lot into terms of one (1) to five (5) years. Thereafter, all vacancies shall be filled in the same manner as the original appointments, and appointments to complete an unexpired term shall be for the residue of the term only.

No member of any system board shall serve on the system board for more than five (5) consecutive years, and in no event shall service on the system board exceed the term of office of the incumbent on the governing board of the participating library which he represents.

The system board shall annually elect from its membership a chairman and such other officers as it may deem necessary to conduct the affairs of the system.

Members of the system board may receive from the regional system their actual and necessary expenses while engaged in business of said system.

SECTION 17. That Section 33-2613, Idaho Code, be, and the same is hereby amended to read as follows:

33-2613~~6~~. POWERS AND DUTIES OF THE SYSTEM BOARD. The system board shall serve as a liaison agency between the participating libraries and their governing bodies and library boards. The system board shall make such bylaws, rules and regulations as may be necessary for its own government and that of the regional system, none of which shall deprive any participating library board of any of its powers or property.

The system board shall have the following powers and responsibilities, all of which relate to the functioning of the regional system and the management and control of its funds and property;

(a) To develop a long range plan of service for the regional system, and annually to submit to the state library board any changes in said long range plan, and a detailed plan of proposed system development and service for the following year.

(b) To provide improved library service for residents of the regional system, in cooperation with participating libraries, and to this end to purchase books and other library materials, supplies and equipment, for the system services, and to employ such personnel as the system board finds necessary.

(c) To set the administrator's hours and rate of compensation for regional system duties, and to delegate such administrative powers as the board deems in the best interest of the system.

(d) To enter into contracts to receive service from or to give service to other libraries, or agencies, within the state or interstate, and to file copies of such contracts with the state library board.

(e) To be a public corporation, as is provided for library districts, and to contract in the name of the "Board of directors of the .... regional library system, Idaho" and in that name to sue and be sued and to take any action authorized by law.

(f) To acquire by purchase, lease, or otherwise, and to own and hold real and personal property and to construct buildings for the use of the regional system, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the system, and to insure the real and personal property of the system.

(g) To have control of the expenditure of all funds of the regional system, to accept by gift or donation any funds and real or personal property under such terms as may be a condition of the gift.

(h) To exercise such other powers, not inconsistent with law, necessary for the effective use and management of the regional system.

SECTION 18. That Section 33-2614, Idaho Code, be, and the same is hereby amended to read as follows:

33-2614<u>7</u>. FINANCE OF REGIONAL SYSTEMS -- BUDGETS -- PARTICIPATING AND NONPARTICIPATING UNITS. Each regional system may be financed by any combination of available funds, federal, state, local, public and/or private. Counties, cities and library districts are hereby authorized and empowered to join in the creation, development, operation and maintenance of regional systems, and to appropriate and allocate funds for the support of such systems. All funds collected or contributed for the support of each regional system shall be controlled and administered under the direction of the system board, following procedures outlined in the library district statutes, and as directed by the state library board.

(a) Participating Units. Participating boards shall continue to control the funds appropriated or contributed for the support of the participating libraries, but may expend all or any part thereof for library services to be furnished by the regional system. Each participating board shall prepare its own annual budget as required by the Idaho Code, and said budget may include anticipated revenues or expenditures for regional system services. Tax levies made pursuant to each such budget shall be certified as provided by law.

(b) System Budget. Each system board shall prepare a preliminary budget for the system for the coming year, and shall by the last day of April forward said budget to the boards of participating libraries. This budget shall be published, and a hearing held thereon before the last day of May.

(c) Non-Participating Areas. The system board shall also prepare a list of those areas within each county of the library region wherein public libraries, library districts, school-community libraries, or association libraries are not maintained as authorized in the Idaho Code. Such lists shall be forwarded to the state library board and to the board of county commissioners of each affected county. The system board shall include in its preliminary budget an estimate of the kinds of services which the system could provide to those areas without established libraries, and the cost of such services, and shall forward this to the appropriate boards of county commissioners.

SECTION 19. That Section 33-2615, Idaho Code, be, and the same is hereby amended to read as follows:

33-2615<u>8</u>. ADDITION TO OR WITHDRAWAL FROM A REGIONAL SYSTEM. (1) After the establishment of a regional system as provided in this act, the board of any library which is not a part of the system, and which is within the boundaries of a library region as established by the Idaho state library board, may petition the state library board for addition to the regional system.

Petitions for addition shall be prepared and processed as provided in this act for initial petitions, except that prior approval in writing shall be obtained by the petitioning board from the regional system board, and shall be attached to the petition when it is submitted to the state library board.

(2) After the establishment of a regional system as provided in this act, a participating library board may petition the state library board for withdrawal from the system. A petition for withdrawal must be received by the state library board at least sixty (60) days before the end of the fiscal year of the system.

All assets of a participating library remain the property of that library, and if a unit withdraws from a system the disposal of the joint assets of the system shall be determined by the state library board, who shall give consideration to such items as the amount of funds raised from each unit of the system, and the ability of the units to make further use of such property or equipment for library purposes.

SECTION 20. That Section 33-2616, Idaho Code, be, and the same is hereby amended to read as follows:

33-2616~~9~~. ADMINISTRATION OF ACT BY STATE LIBRARY BOARD. The Idaho state library board shall administer the provisions of this act, and shall adopt such rules and regulations as are necessary for approval of regional system petitions, review and amendment of regional system plans and contracts, and such other matters as the state library board may deem advisable.

SECTION 21. That Section 33-2617, Idaho Code, be, and the same is hereby amended to read as follows:

33-26~~17~~20. FAILURE TO RETURN BORROWED MATERIAL. Any person who borrows from a publicly funded lending facility any book, newspaper, magazine, manuscript, pamphlet, publication, microform, recording, film, artifact, specimen, device, exhibit or other article belonging to, or in the care of, the facility, under any agreement to return the same within a specified time, and thereafter fails to return the book, newspaper, magazine, manuscript, pamphlet, publication, microform, recording, film, artifact, specimen, device, exhibit or other article, shall be given written notice, which shall bear upon its face a copy of this statute, mailed by a registered or certified letter with return receipt, or delivered in person to such person at his last known address, to return the borrowed article within fifteen (15) days; and in the event that the person shall thereafter wilfully and knowingly fail to return the borrowed article within thirty (30) days, or shall fail to reimburse the facility for the value of the borrowed article plus overdue fines and costs incurred, the person shall be guilty of a petit theft and punishable as provided in chapter 24, title 18, Idaho Code. For purposes of this section, a "publicly funded lending facility" includes any library, gallery, museum, collection or exhibit supported by public funds.

Approved March 26, 1993.

CHAPTER 187
(S.B. No. 1168)

AN ACT

RELATING TO THE REGULATION OF BANKS AND OTHER FINANCIAL INSTITUTIONS; AMENDING SECTION 26-1111, IDAHO CODE, AS AMENDED BY SECTION 21, CHAPTER 213, LAWS OF 1990, TO ESTABLISH A PRIVILEGE FROM DISCLOSURE FOR CONFIDENTIAL COMMUNICATIONS BETWEEN THE DEPARTMENT OF FINANCE OR FEDERAL FINANCIAL INSTITUTION REGULATORS AND FINANCIAL INSTITUTIONS AND TO PROVIDE FOR THE LIMITED DISCLOSURE OF COMMUNICATIONS AT THE DISCRETION OF THE DIRECTOR OF FINANCE OR THE FEDERAL OFFICER OR EMPLOYEE; AMENDING SECTION 26-1112, IDAHO CODE, AS AMENDED BY SECTION 22, CHAPTER 213, LAWS OF 1990, TO CLARIFY LANGUAGE AND RECOGNIZE THE PRIVILEGE ESTABLISHED BY SECTION 26-1111, IDAHO CODE; AND AMENDING SECTION 67-2743E, IDAHO CODE, AS AMENDED BY SECTION 94, CHAPTER 213, LAWS OF 1990, TO CLARIFY LANGUAGE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 26-1111, Idaho Code, as amended by Section 21, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

26-1111. RECORDS NOT PUBLIC. (1) The department of finance shall keep proper ~~and~~ books and records of all regulatory acts, matters and things done by it under the provisions of ~~this act~~ chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 21, and 26, title 26, Idaho Code, as records of its office, but the same shall be subject to disclosure according to chapter 3, title 9, Idaho Code, except as otherwise provided in this section and in sections 26-1112 and 67-2743E, Idaho Code.

(2) All written communications and copies thereof, between the department, the director, department employees and any bank, bank holding company, trust company, savings and loan association and credit union which relate in any manner to the examination or condition of the financial institution, are the property of the department of finance and, if acquired by any person, shall be returned to the department upon written demand.

(3) (a) The director of the department of finance, any federal bank or other financial institution regulatory or supervisory agency, and any bank, bank holding company, trust company, savings and loan association, or credit union incorporated or chartered under title 26, Idaho Code, or under federal law or the law of any state and doing business in the state of Idaho, shall each have a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, and the contents of any documents relating to any confidential communications, between the financial institution and the department of finance or federal bank or financial institution regulatory or supervisory agency made during the regulatory relationship.

(b) A communication is confidential if it is made during the regulatory relationship between the department of finance or the fed-

eral bank or other financial institution regulatory or supervisory agency and any such bank, bank holding company, trust company, savings and loan association or credit union, and if the communication is not designed or intended for disclosure to any other parties.

(c) The privilege may be claimed by the financial institution or by the department of finance or the federal bank or other financial institution regulatory or supervisory agency, or by the lawyer for either. The privilege may be waived only in accordance with this section and sections 26-1112 and 67-2743E, Idaho Code.

(d) The director of the department of finance or the appropriate officer or employee of the federal bank or other financial institution regulatory or supervisory agency may disclose confidential communications between the department or agency and financial institutions to the court, in camera, in a civil action. Such disclosure shall also be a privileged communication and the privilege may be claimed by the director, officer or employee or his lawyer.

(e) No sanction may be imposed upon any financial institution as a result of the claim of a privilege by the financial institution or the director of the department of finance or the officer or employee of the federal supervisory agency under this section.

SECTION 2. That Section 26-1112, Idaho Code, as amended by Section 22, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

26-1112. PENALTY FOR DISCLOSURE OF CONFIDENTIAL INFORMATION. (1) Neither the department of finance, its director nor its employees shall disclose to any person or agency any fact or information obtained in the course of business of the department under this act, except in the following cases:

(~~1~~a) When by the terms of this act or chapter 3, title 9, Idaho Code, it is made the duty of the department to make public records and publish the same.

(~~2~~b) When the department is required by law to take special action regarding the affairs of any bank.

(~~3~~c) When called as a witness in any criminal proceeding ~~or trial~~ in a court of ~~justice~~ competent jurisdiction, provided that the court must review such information in chambers to determine the necessity of disclosing such information, and subject to the privilege provided by subsection (3) of section 26-1111, Idaho Code.

(~~4~~d) When, in the case of ~~an insolvent~~ a problem bank, it is necessary or advisable, in the discretion of the director, for the good of the public or of the depositors.

(~~5~~e) When, in the discretion of the department, it is advisable to disclose any such information to a state or federal bank supervisory agency.

(2) Any person violating the provisions of this section shall be guilty of a felony and conviction shall subject the offender to a forfeiture of his office or employment.

SECTION 3. That Section 67-2743E, Idaho Code, as amended by Section 94, Chapter 213, Laws of 1990, be, and the same is hereby amended

to read as follows:

67-2743E. DISCLOSURE OR USE OF INFORMATION RELATING TO DEPOSITORIES -- PENALTY. ~~Any i~~Information regarding the solvency of the bank obtained by the board, the department of finance, or office of state treasurer, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, except that such disclosure is subject to the privilege set out in subsection (3) of section 26-1111, Idaho Code, and provided further, that the board, the department of finance and the office of state treasurer may disclose such information to federal or state bank examiners having a lawful right to examine said bank or to proper officials legally empowered to investigate criminal charges relating to said bank or to any of its directors or employees, provided that the provisions of this section shall not apply to information included as part of the daily, monthly, biennial or other official reports of the state treasurer's office. Any public official who violates any provision of this section shall forfeit his office or employment and shall also be guilty of a felony. Any person who is not lawfully entitled to such information and who attempts to obtain such information illegally or who misuses such information as he may have obtained shall be guilty of a felony.

Approved March 26, 1993.

CHAPTER 188
(S.B. No. 1186, As Amended)

AN ACT

RELATING TO DUTIES OF SCHOOLS; AMENDING SECTION 18-4511, IDAHO CODE, TO PROVIDE THAT A PRIVATE SCHOOL ACCREDITED BY THE STATE BOARD OF EDUCATION MAY WITHHOLD STUDENTS' RECORDS FOR NONPAYMENT OF TUITION OR FEES, BUT SHALL NOTIFY LAW ENFORCEMENT AGENCIES OF A REQUEST FOR RECORDS AS REQUIRED IN THIS SECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-4511, Idaho Code, be, and the same is hereby amended to read as follows:

18-4511. SCHOOL DUTIES -- RECORDS OF MISSING CHILD -- IDENTIFICATION UPON ENROLLMENT -- TRANSFER OF STUDENT RECORDS. 1. Upon notification by the department of law enforcement of a missing or runaway child report, the school in which the child is currently enrolled shall flag the record of that child in such a manner that whenever a copy of or information regarding the record is requested, the school shall be alerted to the fact that the record is that of a missing or runaway child. The school shall immediately report to the local law enforcement agency any request concerning flagged records or knowledge as to the whereabouts of the missing or runaway child. Upon notification by the department of law enforcement of the return of the missing

or runaway child, the school shall remove the flag from the child's record.

2. Upon enrollment of a student for the first time in a public or private elementary or secondary school, the school shall notify in writing the person enrolling the student that within thirty (30) days he must provide either a certified copy of the student's birth certificate or other reliable proof of the student's identity and birthdate, which proof shall be accompanied by an affidavit explaining the inability to produce a copy of the birth certificate. Other reliable proof of the student's identity and birthdate may include a passport, visa or other governmental documentation of the child's identity.

(a) Upon the failure of a person enrolling a student to comply with the provisions of this subsection, the school shall immediately notify the local law enforcement agency of such failure, and shall notify the person enrolling the student, in writing, that he has ten (10) additional days to comply.

(b) The school shall immediately report to the local law enforcement agency any documentation or affidavit received pursuant to this subsection which appears inaccurate or suspicious in form or content.

3. Within fourteen (14) days after enrolling a transfer student, the public or private elementary or secondary school shall request directly from the student's previous school a certified copy of his record. The requesting school shall exercise due diligence in obtaining the copy of the record requested. A student transferring schools within the same school district need not provide proof of identity and birthdate if the student's record already contains such verified information. Any public or private elementary or secondary school which is requested to forward a copy of a transferred student's record to the student's new school shall comply within ten (10) days of receipt of the request, unless the record has been flagged pursuant to subsection 1 of this section, in which case the copy shall not be forwarded and the school shall notify the local law enforcement agency of the request for a flagged record; provided however, that any private school accredited by the state board of education which has an agreement allowing retention of a student's record when such student's tuition or fees have not been paid may comply with the provisions of this subsection by notifying the student's new school that the transferred student's records are being held for nonpayment of tuition or fees. However, such private school shall be required to notify the local law enforcement agency if the student's record has been flagged pursuant to the provisions of subsection 1 of this section, even if the student's tuition and fees have not been paid.

4. It shall be the duty of the local law enforcement agency to immediately investigate each report received from a school of a failure to comply with the provisions of subsection 2 or subsection 3 of this section.

Approved March 26, 1993.

CHAPTER 189
(S.B. No. 1210)

AN ACT
RELATING TO CAMPAIGN CONTRIBUTIONS; AMENDING SECTION 67-6602, IDAHO CODE, TO FURTHER DEFINE A "NONBUSINESS ENTITY" AND PROVIDE APPLICATION OF REPORTING REQUIREMENTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6602, Idaho Code, be, and the same is hereby amended to read as follows:

67-6602. DEFINITIONS. As used in this act, the following terms have the following meanings:

(a) "Candidate" means an individual who has taken affirmative action to seek nomination or election to public office. An individual shall be deemed to have taken affirmative action to seek such nomination or election to public office when he first:

(1) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(2) Announces publicly or files for office.

(b) "Compensation" includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to do any of the foregoing, for services rendered or to be rendered, but does not include reimbursement of expenses if such reimbursement does not exceed the amount actually expended for such expenses and is substantiated by an itemization of such expenses.

(c) "Contribution" includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, subscription or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee or measure. Such term also includes personal funds or other property of a candidate or members of his household expended or transferred to cover expenditures incurred in support of such candidate but does not include personal funds used to pay the candidate filing fee. Such term also includes the rendering of personal and professional services for less than full consideration, but does not include ordinary home hospitality or the rendering of "part-time" personal services of the sort commonly performed by volunteer campaign workers or advisors or incidental expenses not in excess of twenty-five dollars ($25.00) personally paid for by any volunteer campaign worker. "Part-time" services for the purposes of this definition, means services in addition to regular full-time employment, or, in the case of an unemployed person or persons engaged in part-time employment, services rendered without compensation or reimbursement of expenses from any source other than the candidate or political committee for whom such services are rendered. For the purposes of this act,

contributions, other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution.

(d) "Election" means any general, special or primary election.

(e) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a measure.

(f) "Expenditure" includes any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(g) "Lobby" and "lobbying" each mean attempting through contacts with, or causing others to make contact with, members of the legislature or legislative committees, to influence the approval, modification or rejection of any legislation by the legislature of the state of Idaho or any committee thereof.

(h) "Lobbyist" includes any person who lobbies.

(i) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed, directly or indirectly, and all persons by whom he is compensated for acting as a lobbyist.

(j) "Measure" means any proposal, to be voted statewide, submitted to the people for their approval or rejection at an election, including any initiative, referendum or revision of or amendment to the state constitution. An initiative or referendum proposal shall be deemed a measure when the attorney general reviews it and gives it a ballot title.

(k) "Nonbusiness entity" means any group (of two (2) or more individuals), corporation, association, firm, partnership, committee, club or other organization ~~except any such group, corporation, association, firm, partnership, committee, club or other organization~~ which:

(1) ~~Has~~ Does not have as its principal purpose the conduct of business activities for profit; and

(2) ~~Did not~~ Received during the ~~immediately~~ preceding calendar year ~~receive~~ contributions, gifts or membership fees, which in the aggregate exceeded ten per cent (10%) of its total receipts for such year.

(l) "Person" means an individual, corporation, association, firm, partnership, committee, political party, club or other organization or group of persons.

(m) "Political committee" means:

(1) Any person specifically designated to support or oppose any candidate or measure; or

(2) Any person who receives contributions and makes expenditures in an amount exceeding five hundred dollars ($500) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures.

(3) Any nonbusiness entity which makes expenditures in an amount exceeding one thousand dollars ($1,000) in any calendar year for

the purpose of supporting or opposing one (1) or more candidates or measures.

(n) "Political treasurer" means an individual appointed by a candidate or political committee as provided in section 67-6603, Idaho Code.

(o) "Public office" means any state office or position, including state senator, state representative, and judge of the district court that is filled by election.

Approved March 26, 1993.

CHAPTER 190
(S.B. No. 1215)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE THAT UNPUBLISHED OR IN PROGRESS RESEARCH SHALL BE EXEMPT FROM DISCLOSURE PURSUANT TO PUBLIC RECORDS STATUTES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique, ~~or~~ process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or

inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(37) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(3~~7~~8) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(3~~7~~9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture,

other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

Approved March 26, 1993.

CHAPTER 191
(S.B. No. 1249)

AN ACT
APPROPRIATING MONEYS FOR THE OFFICE ON AGING FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Office on Aging the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	$271,500	$ 35,900	$2,187,200	$2,494,600
Miscellaneous Revenue Fund		16,000		16,000
Federal Grant Fund	333,400	138,700	4,970,900	5,443,000
TOTAL	$604,900	$190,600	$7,158,100	$7,953,600

Approved March 26, 1993.

CHAPTER 192
(S.B. No. 1257)

AN ACT
EXPRESSING LEGISLATIVE INTENT; AND APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is legislative intent that the expenditures for the Department of Fish and Game not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FOR:

Personnel Costs	$23,414,600

Operating Expenditures	15,543,100
Capital Outlay	3,505,800
Trustee and Benefit Payments	700,000
TOTAL	$43,163,500
FROM:	
Fish and Game Fund	$20,382,600
Fish and Game Set-aside Fund	3,225,900
Depredation Claim Fund	300,700
Fish and Game Federal Fund	18,954,100
Fish and Game Expendable Trust Fund	263,800
Fish and Game Nonexpendable Trust Fund	36,400
TOTAL	$43,163,500

SECTION 2. There is hereby appropriated to the Department of Fish and Game the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
Fish and Game Fund	$ 1,633,600	$ 1,141,900	$ 52,500	$400,000	$ 3,228,000
Fish and Game Set-aside Fund	14,300	12,200			26,500
Expendable Trust Fund		800			800
Nonexpendable Trust Fund		100			100
Depredation Claim Fund		700			700
Fish and Game Federal Fund	1,652,000	1,075,800	232,500		2,960,300
TOTAL	$ 3,299,900	$ 2,231,500	$ 285,000	$400,000	$ 6,216,400
II. ENFORCEMENT:					
FROM:					
Fish and Game Fund	4,482,100	882,000	101,400		5,465,500
Fish and Game Federal Fund	$ 159,800	$ 153,200			$ 313,000
TOTAL	$4,641,900	$1,035,200	$101,400		$ 5,778,500
III. FISHERIES:					
FROM:					
Fish and Game Fund	$ 2,661,000	$ 1,941,100	$ 412,500		$ 5,014,600
Fish and Game Set-aside Fund	36,600	107,000	100,000		243,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Federal Fund	5,372,500	5,017,900	1,149,500		11,539,900
Fish and Game Expendable Trust Fund	167,600	33,400	62,000		263,000
Fish and Game Nonexpendable Trust Fund		31,400			31,400
TOTAL	$ 8,237,700	$ 7,130,800	$1,724,000		$17,092,500
IV. WILDLIFE:					
FROM:					
Fish and Game Fund	$ 2,310,800	$ 1,465,800	$ 41,800		$ 3,818,400
Fish and Game Set-aside Fund	52,100	73,600			125,700
Fish and Game Federal Fund	1,743,100	,818,100	300		2,561,500
Fish and Game Nonexpendable Trust Fund	3,000	1,900			4,900
TOTAL	$ 4,109,000	$ 2,359,400	$ 42,100		$ 6,510,500
V. INFORMATION AND EDUCATION:					
FROM:					
Fish and Game Fund	$ 866,100	$ 568,000	$ 2,100		$ 1,436,200
Fish and Game Federal Fund	251,200	228,200	40,000		519,400
TOTAL	$ 1,117,300	$ 796,200	$ 42,100		$ 1,955,600
VI. ENGINEERING:					
FROM:					
Fish and Game Fund	$ 613,300	$ 49,400	$ 16,400		$ 679,100
Fish and Game Federal Fund	38,000	18,800			56,800
TOTAL	$ 651,300	$ 68,200	$ 16,400		$ 735,900
VII. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund	$ 387,700	$ 58,900			$ 446,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Federal Fund	645,400	265,700	92,100		1,003,200
TOTAL	$ 1,033,100	$ 324,600	$ 92,100		$ 1,449,800
VIII. WINTER FEEDING, DEPREDATION CONTROL, AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund	$ 294,200				$ 294,200
Depredation Claim Fund				$300,000	300,000
Fish and Game Set-aside Fund	30,200	$ 1,597,200	$1,202,700		2,830,100
TOTAL	$ 324,400	$ 1,597,200	$1,202,700	$300,000	$ 3,424,300
GRAND TOTAL	$23,414,600	$15,543,100	$3,505,800	$700,000	$43,163,500

Approved March 26, 1993.

CHAPTER 193
(S.B. No. 1258)

AN ACT

APPROPRIATING MONEYS FOR THE COMMISSION FOR THE BLIND FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission for the Blind the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$ 612,000	$ 88,800		$426,000	$1,126,800
Vision Aids and Appliances Fund		24,300			24,300
Randolph Sheppard Fund	29,100	6,900		127,100	163,100
Federal Grant Fund	686,400	316,300		225,200	1,227,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund		16,300	$8,000	8,600	32,900
TOTAL	$1,327,500	$452,600	$8,000	$786,900	$2,575,000

Approved March 26, 1993.

CHAPTER 194
(H.B. No. 104, As Amended)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-219, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY CONDUCT AN EXAMINATION OF A COMPANY AS OFTEN AS THE DIRECTOR DEEMS APPROPRIATE, OR NOT LESS FREQUENTLY THAN ONCE EVERY FIVE YEARS, AND TO PROVIDE FOR THE ACCEPTANCE BY THE DIRECTOR OF AN EXAMINATION REPORT OF ANOTHER STATE; AMENDING SECTION 41-223, IDAHO CODE, TO PROVIDE GUIDELINES AND PROCEDURES; AMENDING SECTION 41-227, IDAHO CODE, AS AMENDED BY CHAPTER 213, LAWS OF 1990, TO PROVIDE PROCEDURES FOR THE FILING AND REVIEW OF THE EXAMINATION REPORT AND TO PROVIDE FOR JUDICIAL REVIEW; AMENDING SECTION 41-609, IDAHO CODE, TO PROVIDE FOR THE COMPUTATION OF LOSS RESERVES PERTAINING TO LIABILITY INSURANCE AND WORKER'S COMPENSATION INSURANCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-613, IDAHO CODE, TO PROVIDE METHODS FOR THE VALUATION OF BONDS; AMENDING SECTION 41-614, IDAHO CODE, TO PROVIDE METHODS FOR THE VALUATION OF OTHER SECURITIES AND TO CORRECT TERMINOLOGY; AMENDING SECTIONS 41-706, 41-714, 41-715 AND 41-731, IDAHO CODE, TO CORRECT STATUTORY REFERENCES TO INVESTMENTS IN SUBSIDIARIES; AMENDING SECTION 41-733, IDAHO CODE, TO PROVIDE THAT AN INSURER MAY INVEST IN SUBSIDIARIES IN ACCORDANCE WITH SECTION 41-3801B, IDAHO CODE; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 17, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE APPLICABILITY, TO PROVIDE MINIMUM STANDARDS, TO PROVIDE FOR DISCLOSURE, TO PROVIDE PENALTIES, AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 41-2843, IDAHO CODE, TO PROVIDE THAT A DOMESTIC INSURER SHALL NOT PAY ANY DIVIDEND TO STOCKHOLDERS EXCEPT OUT OF EARNED SURPLUS, AND TO PROVIDE THAT PRIOR TO THE PAYMENT THEREOF, THE DIRECTOR IN HIS DISCRETION MAY APPROVE THE PAYMENT OF A DIVIDEND FROM OTHER THAN EARNED SURPLUS, AND TO PROVIDE THAT EARNED SURPLUS SHALL INCLUDE SURPLUS ARISING FROM UNREALIZED CAPITAL GAINS OR REVALUATION OF ASSETS; AMENDING SECTION 41-3801, IDAHO CODE, TO PROVIDE AND CLARIFY DEFINITIONS; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3801B, IDAHO CODE, TO PROVIDE FOR INVESTMENTS BY AN INSURER IN SUBSIDIARIES; AMENDING SECTION 41-3802, IDAHO CODE, AS AMENDED BY CHAPTER 213, LAWS OF 1990, TO PROVIDE FOR APPROVAL OF AN ACQUISITION OF CONTROL OF ANY PERSON CONTROLLING A DOMESTIC INSURER; REPEALING SECTION 41-3804, IDAHO CODE; AMENDING SECTION

41-3805, IDAHO CODE, TO PROVIDE PROCEDURES AND GROUNDS FOR APPROVAL OR DISAPPROVAL OF ACQUISITIONS OF CONTROL, AND TO PROVIDE THAT THE COURTS OF IDAHO ARE VESTED WITH JURISDICTION OVER EVERY PERSON WHO FILES A STATEMENT WITH THE DIRECTOR UNDER SECTION 41-3802, IDAHO CODE; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3805B, IDAHO CODE, TO PROVIDE DEFINITIONS, REQUIREMENTS AND STANDARDS RELATING TO ACQUISITIONS OF CONTROL NOT OTHERWISE COVERED UNDER SECTION 41-3802, IDAHO CODE; AMENDING SECTION 41-3806, IDAHO CODE, TO PROVIDE FOR THE ANNUAL REGISTRATION OF HOLDING COMPANY INSURERS, AND TO PROVIDE FOR THE INCLUSION OF ADDITIONAL INFORMATION IN THE REGISTRATION STATEMENT; AMENDING SECTION 41-3807, IDAHO CODE, TO PROVIDE THAT CERTAIN TRANSACTIONS INVOLVING A DOMESTIC INSURER AND ANY PERSON IN ITS HOLDING COMPANY SYSTEM MAY NOT BE ENTERED INTO UNLESS THE DIRECTOR HAS BEEN NOTIFIED OF AND HAS NOT DISAPPROVED THE TRANSACTION; AMENDING SECTION 41-3808, IDAHO CODE, TO PROVIDE FACTORS THAT SHALL BE CONSIDERED IN DETERMINING WHETHER AN INSURER'S SURPLUS AS REGARDS POLICYHOLDERS IS REASONABLE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES; AMENDING SECTION 41-3809, IDAHO CODE, TO PROVIDE THAT AN EXTRAORDINARY DIVIDEND, IS ANY DIVIDEND WHICH, TOGETHER WITH OTHER DIVIDENDS MADE WITHIN THE PRECEDING TWELVE MONTHS, EXCEEDS THE GREATER OF AN INSURER'S SURPLUS TO POLICYHOLDERS, OR THE NET INCOME IF THE INSURER IS NOT A LIFE INSURER, TO PROVIDE THAT A DOMESTIC INSURER THAT IS A MEMBER OF A HOLDING COMPANY SYSTEM SHALL NOTIFY THE DIRECTOR IN WRITING OF ANY DIVIDENDS TO BE PAID WITHIN FIVE DAYS FOLLOWING DECLARATION AND SHALL NOTIFY THE DIRECTOR IN WRITING AT LEAST TEN DAYS PRIOR TO THE PAYMENT OF ANY DIVIDEND, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3810, IDAHO CODE, TO PROVIDE FOR THE EXAMINATION OF AN INSURER OR ITS AFFILIATES; REPEALING SECTION 41-3812, IDAHO CODE; REPEALING SECTION 41-3814, IDAHO CODE; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3814, IDAHO CODE, TO PROVIDE THAT INCONSISTENT LAWS ARE SUPERSEDED BY THIS CHAPTER; AMENDING SECTION 41-3815, IDAHO CODE, TO CORRECT A REFERENCE; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3816, IDAHO CODE, TO PROVIDE FOR SANCTIONS; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3817, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY PROCEED UNDER THE PROVISIONS OF CHAPTER 33, TITLE 41, IDAHO CODE, WITH RESPECT TO VIOLATIONS WHICH MAY IMPAIR THE FINANCIAL CONDITION OF A DOMESTIC INSURER; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3818, IDAHO CODE, TO PROVIDE FOR THE RECOVERY OF PAYMENTS OR DISTRIBUTIONS MADE BY A DOMESTIC INSURER IF THE INSURER HAS BEEN PLACED IN LIQUIDATION OR RECEIVERSHIP; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3819, IDAHO CODE, TO PROVIDE FOR THE SUSPENSION, REVOCATION OR NONRENEWAL OF AN INSURER'S LICENSE OR AUTHORITY TO DO BUSINESS IN THIS STATE; AMENDING CHAPTER 38, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3820, IDAHO CODE, TO PROVIDE FOR JUDICIAL REVIEW OF ACTS OF THE DIRECTOR, AND TO AUTHORIZE AN AGGRIEVED PERSON TO PETITION FOR A WRIT OF MANDAMUS; AMENDING SECTION 41-5109, IDAHO CODE, TO PROVIDE THAT THE LIMITATIONS ON THE PERSONS THAT MAY

SERVE ON THE BOARD OF DIRECTORS OF A REINSURER DO NOT APPLY TO RELATIONSHIPS GOVERNED BY CHAPTER 17, TITLE 41, IDAHO CODE; TO AUTHORIZE THE HOLDING OF CERTAIN INVESTMENTS BY INSURERS FOR A TIME CERTAIN AND TO THEN REQUIRE THAT ALL INVESTMENTS BE HELD AND VALUED IN ACCORDANCE WITH THE IDAHO INSURANCE CODE AS THEN IN EFFECT AND TO PROVIDE SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-219, Idaho Code, be, and the same is hereby amended to read as follows:

41-219. EXAMINATION OF INSURERS. (1) For the purpose of determining its financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with the law, the director shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer, including the attorney in fact of a reciprocal insurer in so far as insurer transactions are concerned, as often as he deems advisable. ~~Except--as otherwise--expressly--provided,--he--shall--so--examine--each-domestic insurer-not-less-frequently-than-every-three-(3)-years~~ The director or any of the director's examiners may conduct an examination, in accordance with the provisions of this section, of any company as often as the director in his sole discretion deems appropriate but shall, at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five (5) years. In scheduling and determining the nature, scope and frequency of the examinations, the director shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the director exercises discretion under the provisions of this section.

(2) Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs in the United States except as otherwise required by the director.

(3) The director shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.

(4) In lieu of ~~making-his-own~~ an examination~~,-the--director--may,-in-his-discretion,-accept-a-full-report-of-the-last-recent-examination of--a~~ under the provisions of this section, of any foreign or alien insurer~~,-certified-to-by-the-insurance-supervisory-official-of-another state~~ licensed in this state, the director may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port of entry until January 1, 1994. Thereafter, such reports may only be accepted if the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program or, the examination is performed under the supervision of an accredited insurance department or with participation of one (1) or more examiners who are employed by such an accred-

ited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(5) The term "company" as used in this section shall mean any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the director.

SECTION 2. That Section 41-223, Idaho Code, be, and the same is hereby amended to read as follows:

41-223. CONDUCT OF EXAMINATION -- ACCESS TO RECORDS -- CORRECTION OF ACCOUNTS -- REMOVAL OF RECORDS. (1) Upon determining that an examination should be conducted, the director or the director's designee shall issue an examination warrant appointing one (1) or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The director may also employ such other guidelines or procedures as the director may deem appropriate.

(2) Upon such examination the director or examiner may examine under oath any officer, agent, or other individual deemed to have material information regarding the affairs of the person under examination.

(~~2~~3) Every person being examined, its officers, attorneys, employees, agents, representatives or others having custody or control thereof, shall make freely available to the director or his examiners the accounts, records, documents, files, information, assets and matters in his possession or control relating to the subject of the examination, and shall facilitate the examination.

(~~3~~4) If the director finds any accounts or records to be inadequate or incorrectly kept or posted, he may procure the services of competent persons to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounts after the director has given him notice and a reasonable opportunity to do so.

(~~4~~5) Neither the director nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices of such person except with the written consent of such person being given in advance of such removal, or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

(6) Nothing contained in this chapter shall be construed to limit the director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

SECTION 3. That Section 41-227, Idaho Code, as amended by Chapter 213, Laws of 1990, be, and the same is hereby amended to read as

follows:

41-227. EXAMINATION REPORT. (1) The director or his examiner shall make a full and true written report of every examination made by him under this chapter, and shall verify the report by his oath.

(2) The report shall comprise only facts appearing upon the books, papers, records or documents of the person being examined, or ascertained from testimony of individuals under oath concerning the affairs of such person, together with such conclusions and recommendations as may reasonably be warranted from such facts.

(3) ~~The director shall furnish a copy of the report to the person examined not less than twenty (20) days prior to filing the report in his office, and may, in his discretion, also furnish a copy thereof to each member of an insurer's board of directors. If such person so requests in writing within such twenty (20) day period, the director shall grant a hearing as to the report and shall not file the report until after the hearing and after such modifications have been made therein as the director deems proper.~~ Prior to ~~the~~ a hearing and prior to ~~the~~ any modifications the report shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(4) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(5) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

(a) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection (2) of this section; or

(c) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(6) (a) All orders entered pursuant to subsection (5) (a) of this section shall be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such order shall be considered a final order and may be appealed pursuant to sections 67-5270 through 67-5279, Idaho Code, and shall be served upon the company by certified

mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) Any hearing conducted under subsection (5) (c) of this section by the director or authorized representative, shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by, or as a result of, the director's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the director shall enter an order pursuant to the provisions of subsection (5) (a) of this section.

(c) The director shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The director or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the director or his representative shall be under oath and preserved for the record.

Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(d) The hearing shall proceed with the director or his representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the director or his representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(7) The report when so verified and filed shall be admissible in evidence in any action or proceeding brought by the director against the person examined, or against its officers, employees or agents, and shall be presumptive evidence of the material facts stated therein. The director or his examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished or filed in the department.

(~~5~~8) After ~~the examination report has been filed, as hereinabove provided~~ an order is entered under the provisions of subsection (5)(a) of this section, the director may publish the report or the results of the examination as contained therein ~~in one or more newspapers in this state~~.

(9) Nothing contained in this chapter shall prevent or be construed as prohibiting the director from disclosing the content of an

examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

SECTION 4. That Section 41-609, Idaho Code, be, and the same is hereby amended to read as follows:

41-609. LOSS RESERVES, LIABILITY INSURANCE AND ~~WORKMEN'S~~ WORKER'S COMPENSATION. Where called for by the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable, shall be computed ~~as follows:~~

~~(1)--For all liability suits being defended under policies written more than:~~

~~(a)--Ten (10) years prior to the date as of which the statement is made, $1,500 for each suit.~~

~~(b)--Five--(5)--or--more and less than ten (10) years prior to the date as of which the statement is made, $1,000 for each suit.~~

~~(c)--Three (3) or more and less than five (5) years prior--to--the date as of which the statement is made, $050 for each suit.~~

~~(2)--For all liability policies written during the three (3) years immediately--preceding the date as of which the statement is made, the reserve shall be sixty per cent (60%) of the earned liability premiums of each of such three (3) years less all losses and--expense--payments made--under liability policies written in the corresponding years; but in any event, such reserve shall for the first of such three (3) years be not less than $750 for each--outstanding--liability--suit--on--such year's policies.~~

~~(3)--For--all workmen's compensation claims under policies written more than three (3) years prior to the date as of which the--statement is--made, the reserve shall be the present value at four per cent (4%) interest of the determined and the estimated future payments.~~

~~(4)--For all workmen's compensation claims under policies--written in--the three (3) years immediately preceding the date as of which the statement is made, such reserve shall be sixty five per cent (65%)--of the earned compensation premiums of each of such three (3) years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the--case--of--the--first year of any such three (3) year period, such reserve shall be not less than the present value at four per cent (4%) interest of the--determined--and--the--estimated--unpaid--compensation claims--under policies written during such year~~ in accordance with the annual statement instructions and the accounting and procedures manual adopted by the national association of insurance commissioners, as provided in section 41-335, Idaho Code.

SECTION 5. That Section 41-613, Idaho Code, be, and the same is hereby amended to read as follows:

41-613. VALUATION OF BONDS. (1) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(~~1~~a) If purchased at par, at the par value.

(~~2~~b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such generally accepted method of valuation elected by the insurer and approved by the director.

(~~3~~c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

(~~4~~d) Unless otherwise provided by valuation established or approved by the director, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The director shall have full discretion in determining the method of calculating values according to the rules set forth in this section, but no such method or valuation shall be inconsistent with any applicable valuation method used by insurers in general, or any such method then currently formulated or approved by the national association of insurance commissioners or its successor organization.

SECTION 6. That Section 41-614, Idaho Code, be, and the same is hereby amended to read as follows:

41-614. VALUATION OF OTHER SECURITIES. (1) Securities, other than those referred to in section 41-613, Idaho Code, held by an insurer may be valued, in the discretion of the director:

(a) At their market value if market value can be reasonably ascertained, or

(b) If the issuer is an insurer, at their unadjusted book value as determined by the ~~insurer's~~ issuer's convention form financial statement filed with insurance public supervisory officials, or

(c) Any other value which the insurer can substantiate to the satisfaction of the director. In addition to other applicable bases of valuation, the director shall give due consideration to valuation based upon:

(i) The net worth of the issuer as shown by financial statements acceptable to the director.

(ii) The acquisition cost of the security to the insurer, adjusted in accordance with generally accepted accounting principles to reflect changes since such acquisition in the issuer's financial condition and business.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, according to a generally accepted method of computation approved by the director.

(3) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof as based upon

those assets only of the subsidiary which would be eligible under chapter 7, title 41, Idaho Code, for investment of the funds of the insurer directly.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the national association of insurance commissioners or its successor organization.

SECTION 7. That Section 41-706, Idaho Code, be, and the same is hereby amended to read as follows:

41-706. DIVERSIFICATION OF INVESTMENTS. An insurer shall invest in or hold as assets categories of investments within applicable limits as follows only:

(1) One (1) person. An insurer shall not, except with the consent of the director, have at any one (1) time any combination of investments in or loans upon the security of the obligations, property, or securities of any one (1) person, institution, corporation, or municipal corporation, aggregating an amount exceeding ten per cent (10%) of the insurer's assets. This restriction shall not apply as to investments or deposits fully insured by the Federal Deposit Insurance Corporation or to general obligations of the United States of America or of any state or include policy or annuity contract loans made under section 41-718, Idaho Code, or to assets subject to sections 41-715 or 41-~~7333~~801B, Idaho Code.

(2) Voting stock. An insurer shall not invest in or hold at any one (1) time more than ten per cent (10%) of the outstanding voting stock of any corporation, except with the consent of the director given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of subsidiaries of the insurer or a companion company or companies under substantially the same management at the time of purchase, as referred to in sections 41-715 or 41-~~7333~~801B, Idaho Code.

(3) Minimum capital. An insurer (other than title insurer) shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections of this chapter: section 41-707, Idaho Code, (public obligations), and section 41-721, Idaho Code, (real estate mortgages and contracts).

(4) Life insurance reserves. A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts in force, as prescribed by section 41-612, Idaho Code, in cash and/or the securities or investments allowed under this chapter, other than in common stocks, insurance stocks and stocks of subsidiaries of the insurer.

(5) Other specific limits. Limits as to investments in the category of real estate shall be as provided in section 41-728, Idaho Code; and other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

SECTION 8. That Section 41-714, Idaho Code, be, and the same is hereby amended to read as follows:

41-714. COMMON STOCKS. After satisfying the requirements of section 41-706(3) and (4) (investment of capital and life reserves), an insurer may invest funds in an aggregate amount not in excess of fifteen per cent (15%) of its assets in common shares of stock of any solvent institution existing under the laws of the United States or of any state, district or territory thereof that qualify as a sound investment, in addition to the shares of a substantially owned or wholly owned subsidiary corporation.

For the purpose of determining the investment limitation imposed by this section, the insurer shall value securities subject to the provisions of this section at the cost of the security or at the market value of the security, whichever is lower. However, investments in the shares of subsidiaries or companion insurance companies shall be governed by sections 41-715 and ~~41-733 of this chapter~~ 41-3801B, Idaho Code.

The limitations as to investment in common stocks as provided herein shall not apply to nor limit the right of investments in investment trust securities as provided for in section 41-716, Idaho Code.

SECTION 9. That Section 41-715, Idaho Code, be, and the same is hereby amended to read as follows:

41-715. INSURANCE STOCKS. (1) An insurer may invest in subsidiary and/or companion insurance companies not to exceed fifteen per cent (15%) of assets. For the purpose of calculating this fifteen per cent (15%) limitation, all investments made under section 41-~~733~~3801B, Idaho Code, and section 41-715, Idaho Code, must be valued at market value of the security if actively traded, or at cost if not actively traded.

(2) The limitations on investments in insurance stocks set forth in this section shall not apply to stocks acquired under a plan for merger of the insurers which has been approved by the director or as to shares received as stock dividends upon shares already owned.

(3) Shares acquired and held under this section shall not, for the purposes of the limitations provided under section 41-714, Idaho Code, be included among other common stocks held by the insurer.

SECTION 10. That Section 41-731, Idaho Code, be, and the same is hereby amended to read as follows:

41-731. PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING. (1) In addition to investments excluded under other provisions of this code, an insurer shall not directly or indirectly invest in or loan its funds upon the security of:

(a) Issued shares of its own capital stock, except for the purpose of mutualization under section 41-2854, Idaho Code, or in connection with a plan approved by the director for purchase of such shares by the insurer's officers, employees, or agents, or for other reasonable purposes under a plan filed with and approved by the director. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.

(b) Except with the director's consent, any security issued by

any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, controlling stockholders, and the spouses and children of any of the foregoing individuals. Investments in subsidiaries under sections 41-706(2), 41-715 and 41-~~733~~3801B, Idaho Code, shall not be subject to this provision.

(c) Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the insurer, or the spouse or child of any of the foregoing individuals, except as to policy loans authorized under section 41-718, Idaho Code.

(d) Any investment or security which is found by the director to be designed to evade any prohibition of this chapter.

(2) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

SECTION 11. That Section 41-733, Idaho Code, be, and the same is hereby amended to read as follows:

41-733. SUBSIDIARY INVESTMENTS. ~~(1)~~ An insurer may invest in ~~the stock--of--its--subsidiary--corporation--formed-or-acquired-by-it,-and engaged-in-any-business-activity-legal-for-a-business--corporation--as defined-by-the-laws-of-the-state-of-Idaho-and-not-specifically-prohibited-to-an-insurance-company-in-this-section-of-the-Idaho-Code.~~

~~(2)--For--the-purposes-of-this-section,-a-"subsidiary"-is-a-corporation-of-which-the-insurer-owns-sufficient-stock-to-give-it-effective control.~~

~~(3)--After-satisfying-the-requirements-of--section--41-706(3)--and (4),-Idaho-Code,-(investment-of-capital-and-life-reserves)-an-insurer, in-addition-to-other-investments-permitted-by-this-chapter,-may-invest an--amount-not-to-exceed-fifteen-per-cent-(15%)-of-assets,-directly-or indirectly,-in-the-shares-of-one-or-more-subsidiary-business--corporations-acquired-pursuant-to-the-provisions-of-this-section~~ subsidiaries in accordance with section 41-3801B, Idaho Code.

SECTION 12. That Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 17, Title 41, Idaho Code, and to read as follows:

CHAPTER 17
BUSINESS TRANSACTED WITH BROKER CONTROLLED INSURER

41-1701. SHORT TITLE. This chapter may be cited as the "Business Transacted with Broker Controlled Insurer Act."

41-1702. DEFINITIONS. As used in this chapter:

(1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners (NAIC).

(2) "Broker" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation,

commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation.

(3) "Control" or "controlled" has the meaning ascribed in section 41-3801(2), Idaho Code.

(4) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a broker.

(5) "Controlling broker" means a broker who, directly or indirectly, controls an insurer.

(6) "Licensed insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state. The following inter alia, are not licensed insurers for the purposes of this chapter:

(a) All risk retention groups as defined in the superfund amendments reauthorization act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the risk retention act 15 U.S.C. section 3901 et seq. (1982 & supp. 1986) and chapter 48, title 41, Idaho Code;

(b) All residual market pools and joint underwriting authorities or associations; and

(c) All captive insurers (for purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and/or group members and their affiliates).

41-1703. APPLICABILITY. This chapter shall apply to licensed insurers as defined in section 41-1702, Idaho Code, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of chapter 38, title 41, Idaho Code, to the extent they are not superseded by this chapter, shall continue to apply to all parties within holding company systems subject to the provisions of this chapter.

41-1704. MINIMUM STANDARDS. (1) The provisions of this section:

(a) Shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

(b) Notwithstanding paragraph (a) of this subsection, the provisions of this section shall not apply if:

(i) The controlling broker:

1. Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

2. Accepts insurance placements only from nonaffiliated subbrokers, and not directly from insureds; and

(ii) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling broker, a broker controlled by a controlled insurer, or a broker that is a subsidiary of the controlled insurer.

(2) Required contract provisions. A controlled insurer shall not accept business from a controlling broker and a controlling broker shall not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination;

(b) The controlling broker shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling broker;

(c) The controlling broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract;

(d) All funds collected for the controlled insurer's account shall be held by the controlling broker in a fiduciary capacity, in one (1) or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling broker not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction;

(e) The controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(f) The contract shall not be assigned in whole or in part by the controlling broker;

(g) The controlled insurer shall provide the controlling broker with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker;

(h) The rates and terms of the controlling broker's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no

greater than those applicable to comparable business placed with the controlled insurer by brokers other than controlling brokers. For purposes of this subsection and subsection (2) (g) of this section, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(i) If the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (4) (a) of this section;

(j) A limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and shall not accept business from the controlling broker if the limit is reached. The controlling broker shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(k) The controlling broker may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(3) Audit committee. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the director to review the adequacy of the insurer's loss reserves.

(4) Reporting requirements.

(a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the director an opinion of an independent casualty actuary (or such other independent loss reserve specialist acceptable to the director) reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end (including incurred but not reported) on business placed by the broker; and

(b) The controlled insurer shall annually report to the director the amount of commissions paid to the broker, the percentage such amount represents of the net premiums written and comparable

amounts and percentage paid to noncontrolling brokers for placements of the same kinds of insurance.

41-1705. DISCLOSURE. The broker, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer; except that, if the business is placed through a subbroker who is not a controlling broker, the controlling broker shall retain in his records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has or will notify the insured.

41-1706. PENALTIES. (1) If the director believes that the controlling broker or any other person has not materially complied with the provisions of this chapter, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the director may order the controlling broker to cease placing business with the controlled insurer; and, if it was found that because of such material noncompliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the director may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 33, title 41, Idaho Code, and the receiver appointed under that order believes that the controlling broker or any other person has not materially complied with the provisions of this chapter, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance code.

(4) Nothing contained in this section is intended to, or shall in any manner, alter or affect the rights of policyholders, claimants, creditors or other third parties.

SECTION 13. Section 12 of this act shall take effect on July 1, 1993. Controlled insurers and controlling brokers who are not in compliance with section 41-1704, Idaho Code, on its effective date shall have sixty (60) days to come into compliance and shall comply with section 41-1705, Idaho Code, beginning with all policies written or renewed on or after August 30, 1993.

SECTION 14. That Section 41-2843, Idaho Code, be, and the same is hereby amended to read as follows:

41-2843. DIVIDENDS TO STOCKHOLDERS. ~~(1)~~ A domestic stock insurer shall not pay any ~~cash~~ dividend to stockholders except out of ~~that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains.~~

~~(2)--A--cash--dividend--otherwise-lawful-may-be-payable-out-of-the insurer's-earned-surplus-even-though-its-total-surplus--is--then--less than--the--aggregate--of--its--past-contributed-surplus-resulting-from issuance-of-its-capital-stock-at-a-price-in-excess-of--the--par--value thereof.~~

~~(3)--A--stock--dividend--may--be-paid-out-of-any-available-surplus funds-in-excess-of-the-aggregate-amount-of--surplus--advanced--to--the insurer--under--arrangements-such-as-authorized-in-section-41-2841-and then-remaining-unpaid-by-the-insurer~~ earned surplus. Prior to payment thereof, the director, in his discretion, may approve the payment of a dividend from other than earned surplus. For purposes of this section, "earned surplus" shall include surplus arising from unrealized capital gains or revaluation of assets.

SECTION 15. That Section 41-3801, Idaho Code, be, and the same is hereby amended to read as follows:

41-3801. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Affiliate" of, or a person "affiliated" with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Control," including "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten per cent (10%) or more of the voting securities, or voting insurance policies in the case of mutual or reciprocal insurers, of any other person. This presumption may be rebutted by a showing made in the manner provided in section 41-3806 (11), Idaho Code, that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Insurance holding company system" shall consist of two (2) or more affiliated persons, one or more of which is an insurer.

(4) "Insurer" shall have the same meaning given it in section 41-103, Idaho Code.

(5) "Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or any similar entity, or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

(6) "Subsidiary" of a specified person shall mean an affiliate controlled by such person directly, or indirectly through one or more

intermediaries.

(7) "Director" means the director of the department of insurance of this state.

(8) "Security holder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(9) "Voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

SECTION 16. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3801B, Idaho Code, and to read as follows:

41-3801B. SUBSIDIARIES OF INSURERS. (1) Any domestic insurer, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries. Such subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(2) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under title 41, Idaho Code, a domestic insurer may also:

(a) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of such insurer's assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(i) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(ii) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

(b) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subsection (2) of this section or in chapter 7, title 41, Idaho Code, applicable to the insurer. For

the purpose of this clause, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset; and

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(c) With the approval of the director, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus regarding policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (2) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in title 41, Idaho Code, applicable to such investments of insurers.

(4) Whether any investment pursuant to subsection (2) of this section meets the applicable requirements thereof is to be determined before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(5) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the director may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter, and the insurer has notified the director thereof.

SECTION 17. That Section 41-3802, Idaho Code, as amended by Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

41-3802. ACQUISITION OF CONTROL OF A DOMESTIC INSURER. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer <u>or any person controlling a domestic insurer</u> unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the director and has sent to such insurer, a statement containing the information required

by this section and such offer, request, invitation, agreement or acquisition has been approved by the director in the manner hereinafter prescribed.

(a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless such person as determined by the director is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a preacquisition notification with the director containing the information set forth in section 41-3805B(3) (a), Idaho Code, thirty (30) days prior to the proposed effective date of the acquisition. Failure to file is subject to section 41-3805B(5) (c), Idaho Code. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(2) The statement to be filed with the director hereunder shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected (hereinafter called acquiring party), and

~~1.~~(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

~~2.~~(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph 1 of this subsection~~.~~;

~~3.~~(iii) For individuals and directors and executive officers of corporations, the information from time to time specified by the director on the "biographical affidavit" of the department of insurance.

(b) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and if distributed, of additional soliciting material relating thereto.

(k) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(l) Such additional information as the director may by rule or regulation prescribe as necessary or appropriate for the protec-

tion of policyholders and security holders of the insurer or in the public interest.

(m) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate or other group, the director may require that the information called for by clauses (a) through (l) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the director may require that the information called for by clauses (a) through (l) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

(n) If any material change occurs in the facts set forth in the statement filed with the director and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the director and sent to such insurer within two (2) business days after the person learns of such change.

(3) If any offer, request, invitation, agreement or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize such documents in furnishing the information called for by that statement.

SECTION 18. That Section 41-3804, Idaho Code, be, and the same is hereby repealed.

SECTION 19. That Section 41-3805, Idaho Code, be, and the same is hereby amended to read as follows:

41-3805. APPROVAL, DISAPPROVAL OF PROPOSED ACQUISITION. (1) The director shall approve any purchases, exchanges, mergers, or other acquisitions of control referred to in section 41-3802, Idaho Code, ~~may not be made until the director either approves the purchases, exchanges, mergers or other acquisitions of control within sixty (60) days after the statement required by section 41-3802, Idaho Code, complete with all information required, has been filed with him, or fails to disapprove such purchases, exchanges, mergers or other acquisitions of control within such sixty (60) day period. An application shall be deemed complete unless within ten (10) days after a filing, the director notifies the applicant that the application is incomplete. The purchases, exchanges, mergers or other acquisitions of control referred to in section 41-3802, Idaho Code, shall be deemed approved~~

~~after-the-expiration-of-sixty-(60)-days-from-the--time--the--statement referred--to--in--section-41-3802,-Idaho-Code,-is-filed-and-completed, unless-the-director-acts-to-approve-or-disapprove-the-same.~~

~~A-hearing-is-not-required-unless-the-director-elects-to-disapprove any-such-transaction,-although-the-director-may,--in--his--discretion, hold--a--hearing-prior-to-approving-an-acquisition-if-he-deems-such-to be-desirable-or-necessary.-The-director-may-disapprove-any-such-transaction-within-such-sixty-(60)-day-period-if-he-finds~~ unless, after a public hearing, the director finds that:

(a) After the change of control the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in this state;

(b) The effect of the purchases, exchanges, merger (of a controlling person of the insurer), or other acquisitions of control may be substantially to lessen competition in insurance in this state or tend to create a monopoly therein~~;-or-would-violate-the-laws-of this-state-or-of-the--United--States--relating--to--monopolies--or restraint--of-trade;~~. In applying the competitive standard in this paragraph:

(i) The informational requirements of section 41-3805B(3)(a), Idaho Code, and the standards of section 41-3805B(4)(b), Idaho Code, shall apply;

(ii) The merger or other acquisition shall not be disapproved if the director finds that any of the situations meeting the criteria provided in section 41-3805B(4) (c), Idaho Code, exist; and

(iii) The director may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(c) The financial condition of an acquiring person is such as would jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or, in the case of an acquisition of control, the interest of any remaining stockholders who are unaffiliated with the acquiring person;

(d) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair ~~or-prejudicial~~ and unreasonable to policyholders of the insurer and not in the public interest; ~~or~~

(e) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders, stockholders, or the public to permit ~~them--to-do-so~~ the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The ~~provisions--of--sections--41-3802-through-41-3805,-Idaho Code,-do-not-apply-to-any-change-of-control-if-and-to-the-extent--that the-director,-by-rule-or-regulation-or-by-order,-shall-exempt-the-same~~

~~from--the--provisions--of--such-sections-as-acquisitions-which,-in-the director's-judgment,-are-not-adverse-to-the-public--interest--and--the interests-of-policyholders-and-shareholders,-and-therefore-not-comprehended--within--the-purpose-of-this-chapter~~ public hearing referred to in subsection (1) of this section shall be held within thirty (30) days after the statement required by section 41-3802, Idaho Code, is filed, and at least twenty (20) days' notice thereof shall be given by the director to the person filing the statement. Not less than seven (7) days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the director. The director shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district courts in this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) Merger, consolidation or bulk reinsurance as to a domestic insurer shall be effectuated only pursuant to the applicable provisions of chapter 28, title 41 (organization and corporate procedures of stock and mutual insurers), Idaho Code, and chapter 30, title 41 (mutual benefit associations), Idaho Code.

(4) The director may retain any attorney, actuary, accountant, or other individual, organization, corporation, association, or business entity not otherwise a member of the director's staff as may be reasonably necessary to assist the department in the processing of any merger or acquisition of control proposed under this section. All reasonable expenses incurred in connection herewith shall be borne by the party seeking the acquisition. The director may require the acquiring party to post a bond in an amount not to exceed twenty-five thousand dollars ($25,000) as security for payment of such expenses.

(5) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the director by order shall exempt therefrom as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

(6) The following shall be violations of this section:

(a) The failure to file any statement, amendment, or other material required to be filed pursuant to the provisions of section 41-3802(1) or (2), Idaho Code; or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the director has given his approval thereto.

(7) The courts of Idaho are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in Idaho who files a statement with the director under the provisions of section 41-3802, Idaho Code, and overall actions involving such person arising out of violations of the provisions of this section, and each

such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the director to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the director and transmitted by registered or certified mail by the director to such person at his last known address.

SECTION 20. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3805B, Idaho Code, and to read as follows:

41-3805B. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE COVERED. (1) The following definitions shall apply for the purposes of this section only:

(a) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(2) (a) Except as exempted in subsection (b) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(b) This section shall not apply to the following:

(i) An acquisition subject to approval or disapproval by the director pursuant to sections 41-3802 and 41-3805, Idaho Code;

(ii) A purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under the provisions of section 41-3801(2), Idaho Code, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the director of this state;

(iii) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the director in accordance with subsection (3) (a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, such preacquisition notification is not required for exclusion from the provisions of this section if the acquisition would otherwise be excluded from the provisions of this section by any other subsection of this subsection;

(iv) The acquisition of already affiliated persons;

(v) An acquisition if, as an immediate result of the acquisition,

1. In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,

2. There would be no increase in any market share, or

3. In no market would the combined market share of the involved insurers exceed twelve percent (12%) of the total market, and the market share increase by more than two percent (2%) of the total market.

For the purpose of subsection (b) (v) of this section, a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(vi) An acquisition for which a preacquisition notification would be required pursuant to the provisions of this section due solely to the resulting effect on the ocean marine insurance line of business;

(vii) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that such insurer is in failing condition; there is a lack of a feasible alternative to improving such condition; the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner to the director of this state.

(3) An acquisition covered under the provisions of subsection (2) of this section may be subject to an order pursuant to subsection (5) of this section, unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification.

(a) The preacquisition notification shall be in such form and contain such information as prescribed by the national association of insurance commissioners relating to those markets which, under subsection (2) (b) (v) of this section, cause the acquisition not to be exempted from the provisions of this section. The director may require such additional material and information as he deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(b) The waiting period required shall begin on the date of receipt of the director of a preacquisition notification and shall end on the earlier of the 30th day after the date of such receipt, or termination of the waiting period by the director. Prior to the end of the waiting period, the director, on a one-time basis, may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period

shall end on the earlier of the 30th day after receipt of such additional information by the director or termination of the waiting period by the director.

(4) (a) The director may enter an order under the provisions of subsection (5) (a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with the provisions of subsection (3) of this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of subsection (a) of this section, the director shall consider the following:

(i) Any acquisition covered under the provisions of subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

1. If the market is highly concentrated and the involved insurers possess the following shares of the market:

INSURER A	INSURER B
4%	4% or more
10%	2% or more
15%	1% or more

2. Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

INSURER A	INSURER B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in subsection (4) (a) of this section. For the purpose of this subsection, the insurer with the greatest share of the market shall be deemed to be insurer A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (2) of this section, involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive stan-

dards in subsection (a) of this section if:

1. There is a significant trend toward increased concentration in the market;

2. One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

3. Another involved insurer's market is two percent (2%) or more.

(iii) For the purposes of subsection (4) (b) of this section:

1. The term "insurer" includes any company or group of companies under common management, ownership or control;

2. The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the director shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

3. The burden of showing prima facie evidence of violation of the competitive standard rests upon the director.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under subsections (4) (b) (i) and (ii) of this section, the director may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standards under subsections (4) (b) (i) and (ii) of this section, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under the the provisions of this subsection include, but are not limited to, the following: market share, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(c) An order may not be entered under the provisions of subsection (5) (a) of this section, if:

(i) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(ii) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

(5) (a) (i) If an acquisition violates the standards of the provisions of this section, the director may enter an order:

1. Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

2. Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(ii) Such an order shall not be entered unless:

1. There is a hearing;

2. Notice of such hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and

3. The hearing is concluded and the order is issued no later than sixty (60) days after the end of the waiting period.

Every order shall be accompanied by a written decision of the director setting forth his findings of fact and conclusions of law.

(iii) An order entered under the provisions this subsection shall not become final earlier than thirty (30) days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the director shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(iv) An order pursuant to the provisions of this subsection shall not apply if the acquisition is not consummated.

(b) Any person who violates a cease and desist order of the director under subsection (5) (a) (i) of this section, and while such order is in effect may, after notice and hearing and upon order of the director, be subject to the discretion of the director to any one (1) or more of the following:

(i) A monetary penalty of not more than ten thousand dollars ($10,000) for every day of violation; and/or

(ii) Suspension or revocation of such person's license.

(c) Any insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine of not more than fifty thousand dollars ($50,000).

(6) Sections 41-3815 (2) and (3) and 41-3817, Idaho Code, do not apply to acquisitions covered under subsection (2) of this section.

SECTION 21. That Section 41-3806, Idaho Code, be, and the same is hereby amended to read as follows:

41-3806. REGISTRATION OF HOLDING COMPANY SYSTEM INSURERS. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director; except~~, that such requirements shall not apply to a foreign insurer domiciled in a jurisdiction which has adopted by~~

~~statute or regulation disclosure requirements and standards substantially similar to those contained in this chapter~~ a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(a) Section 41-3806, Idaho Code;

(b) Sections 41-3807 (1), 41-3808 and 41-3809, Idaho Code; and

(c) Either section 41-3807 (2), Idaho Code, or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Each insurer which is subject to registration under the provisions of this section shall register within ~~sixty (60) days after the effective date of this chapter or~~ fifteen (15) days after it becomes subject to registration, ~~whichever is later~~ and annually thereafter by May 1 of each year for the previous calendar year, unless the director, for good cause shown, extends the time for registration, and then within such extended time. Nothing in this section shall be construed to prohibit the director from requesting any authorized insurer, which is a member of a holding company system and not subject to registration under the provisions of this section, for a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its state of domicile. Upon request of the insurer or of the insurance regulatory authority of another jurisdiction in which the insurer is authorized to transact insurance, the director at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the director pursuant to this chapter.

(2) Every insurer subject to registration shall file a registration statement, on a form provided by the director, which shall contain current information about:

(a) The capital structure, general financial condition, ownership and management of the insurer and of any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(i) Loans and other investments, and purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements~~, other than cost allocation arrangements~~

~~based upon generally accepted accounting principles;~~

(vi) Reinsurance agreements ~~covering--all or substantially all of one or more lines of insurance or the ceding--insurer; and~~

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements.

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(~~c~~e) Other matters concerning transactions between the insurer and any affiliate as may be required by the director.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed pursuant to this section if such information is not material to the purposes of this chapter. Unless the director by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one per cent (.5%) or less of an insurer's admitted assets as of December 31 immediately preceding shall not be deemed material for purposes of this section.

~~(4)--Each--registered--insurer--shall keep current the information required to be disclosed in its registration statement by reporting on forms provided by the director all material changes or additions on or before the fifteenth day of the--month--following--that--in--which--it learns of each such change or addition.~~

(5) Subject to the provisions of section 41-3809, Idaho Code, each registered insurer shall report to the director all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(7) The director shall terminate the registration of any insurer which demonstrates that it is no longer a member of an insurance holding company system.

~~(6)--Two--(2)--or more affiliated insurers subject to registration hereunder may file a consolidated registration statement--or--consolidated--reports--amending--their--respective consolidated statements or their individual registration statements so long as such--consolidated filings--correctly--reflect--the condition of and transactions between such persons.~~

(8) The director may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

(~~7~~9) The director may allow any insurer, which is authorized to do business in this state and which is part of an insurance holding company system, to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section, and to file all information and material required to be filed under the pro-

visions of this chapter.

(~~8~~10) This section shall not apply to any insurer, information or transaction if and to the extent that the director by rule, regulation, or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof.

(~~9~~11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and the insurer as well as the bases for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the director disallows the disclaimer. The director shall disallow a disclaimer only after a hearing thereon with notice to all parties in interest, and after making specific findings of fact to support such disallowance.

~~(10)--If--any-material-change-occurs-in-the-facts-set-forth-in-the statement-filed-with-the-director-pursuant-to-section--41-3802,--Idaho Code,--or-a-registration-statement-filed-with-the-director-pursuant-to section-41-3806,-Idaho-Code,-or-a-disclaimer-of-affiliation-filed-with the-director-pursuant-to-section-41-3806,--Idaho--Code,--an--amendment setting--forth--such-change,-together-with-copies-of-all-documents-and other-material-relevant-to-such-change,-shall-be-filed-with-the-director-within-five-(5)-business-days-after-the-person-knows-or-has-reason to-know-of-such-change.~~

(12) The failure to file a registration statement or any summary of the registration statement thereto required in this section within the time specified for such filing shall be a violation of the provisions of this section.

SECTION 22. That Section 41-3807, Idaho Code, be, and the same is hereby amended to read as follows:

41-3807. TRANSACTIONS WITH AFFILIATES -- STANDARDS. ~~Material transactions--by--registered--insurers-with-their-affiliates-occurring after-the-effective-date-[October-1,-1972]-of-this-chapter~~ (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(~~1~~a) The terms shall be fair and reasonable;

(b) Charges or fees for service performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied:

(~~2~~d) The books, accounts, and records of each party shall be so maintained as to disclose clearly and accurately the precise nature and details of the transaction, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(~~3~~e) The insurer's surplus ~~to-policy-holders~~ as regards policyholders following any dividends or distributions to stockholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the director in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the director may permit, and the director has not disapproved it within such period.

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided such transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders;

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of the 31st day of December next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders;

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of the 31st day of December next preceding;

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one (1) or more affiliates of the insurer;

(d) All management agreements, service contracts and all cost-sharing arrangements; and

(e) Any material transactions, specified by regulation, which the director determines may adversely affect the interests of the insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director determines that such separate transactions were entered into over any twelve (12) month period for such purpose, he may exercise his authority under section 41-3816,

Idaho Code.

(4) The director, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section, and whether they may adversely affect the interests of policyholders.

(5) The director shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent (10%) of such corporation's voting securities.

SECTION 23. That Section 41-3808, Idaho Code, be, and the same is hereby amended to read as follows:

41-3808. INSURERS SURPLUS -- ADEQUACY FACTORS. For the purposes of this chapter, in determining whether an insurer's surplus ~~to policy holders~~ as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of the risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus ~~to policy holders~~ as regards policyholders;

(8) The surplus ~~to policy holders~~ as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in ~~subsidiaries~~ affiliates. The director may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(11) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

SECTION 24. That Section 41-3809, Idaho Code, be, and the same is hereby amended to read as follows:

41-3809. DIVIDENDS AND DISTRIBUTIONS. (1) No insurer subject to registration under the provisions of this chapter shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until sixty (60) days after the director has received notice of the declaration thereof, and has not within such period disapproved such payment, or the director shall have approved such payment within such sixty (60) day period. For purposes of this section,

an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding twelve (12) months, exceeds the greater of ten per cent (10%) of the insurer's surplus to ~~policy-holders~~ policyholders as of December 31 of the year immediately preceding, or the net gain from operations of the insurer if the insurer is a life insurer, or the net ~~investment~~ income if the insurer is not a life insurer, for the twelve (12) month period ending December 31 of the year immediately preceding, but shall not include pro rata distributions of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the director's approval thereof, and such a declaration shall confer no rights upon stockholders until the director has approved the payment of the dividend or distribution or the director has not disapproved such payment within the period referred to above.

(2) A domestic insurer that is a member of a holding company system shall notify the director in writing of any dividends to be paid or other distributions to be made to shareholders within five (5) business days following the declaration of the dividend or distribution, and shall notify the director in writing at least ten (10) days, commencing from the date of receipt by the director, prior to the payment of any dividends or the making of any other distribution.

SECTION 25. That Section 41-3810, Idaho Code, be, and the same is hereby amended to read as follows:

41-3810. VERIFICATION OF INFORMATION. (1) Subject to the limitations contained in this section and in addition to the powers which the director has under chapter 2, title 41, Idaho Code, relating to the examination of insurers, the director shall also have the power to order any insurer registered under the provisions of this chapter to produce such records, books, or papers in the possession of the insurer or its affiliates as ~~shall be~~ are reasonably necessary to ~~verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between the insurer and affiliates. Such books, records, papers and information shall be examined in the manner prescribed in such chapter 2, Idaho Code, relating to the time, place and expense of examination~~ ascertain the financial condition of such insurer or to determine compliance with this chapter. In the event such insurer fails to comply with such order, the director shall have the power to examine such affiliates to obtain such information.

(2) The ~~purposes of the examination shall be to verify the registration statement and any addition or amendment thereto made or required pursuant to the provisions of this chapter~~ director may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the director's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books and papers pursuant to subsection (1) of this section shall be

liable for and shall pay the expense of such examination in accordance with the provisions of section 41-228, Idaho Code.

SECTION 26. That Section 41-3812, Idaho Code, be, and the same is hereby repealed.

SECTION 27. That Section 41-3814, Idaho Code, be, and the same is hereby repealed.

SECTION 28. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3814, Idaho Code, and to read as follows:

41-3814. SUPPLEMENTAL TO EXISTING PROVISIONS. All laws and parts of laws of this state inconsistent with this chapter are hereby superseded with respect to matters covered in this chapter, except this chapter supplements those provisions contained in section 41-341, Idaho Code (Operational standards between insurer, its parent corporation, subsidiary or affiliated person), and no provision of this chapter shall be deemed to supersede or modify any provisions of section 41-341, Idaho Code.

SECTION 29. That Section 41-3815, Idaho Code, be, and the same is hereby amended to read as follows:

41-3815. INJUNCTIONS. (1) Whenever it appears to the director that the insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of the provisions of this chapter or of any rule, regulation, or order issued by the director hereunder, the director may apply to Ada county to the district court, fourth judicial district for Ada county, for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate the provisions of this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(2) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the director hereunder, may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the director has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or any rule, regulation or order issued by the director hereunder, the insurer or the director may apply to the fourth judicial district court for Ada county or to the district court for the county in which

the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section ~~7 of this act~~ 41-3802, Idaho Code, or any rule, regulation, or order issued by the director thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the director hereunder, the fourth judicial district court for Ada county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the director, seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter.

Notwithstanding any other provisions of law, for the purposes of this chapter, the sites of the ownership of the securities of domestic insurers shall be deemed to be in this state.

SECTION 30. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3816, Idaho Code, and to read as follows:

41-3816. SANCTIONS. (1) Any insurer failing, without just cause, to file any registration statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of one hundred dollars ($100) for each day's delay, to be recovered by the director of insurance and the penalty so recovered shall be distributed to the general account of the state of Idaho. The maximum penalty under this section is ten thousand dollars ($10,000). The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 41-3806(1), 41-3807(2) or 41-3809, Idaho Code, or which violates the provisions of this chapter shall pay, in their individual capacity, a civil forfeiture of not more than five thousand dollars ($5,000) per violation, after notice and hearing before the director. In determining the amount of the civil forfeiture, the director shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the director that any insurer subject to this chapter or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is

subject to the provisions of section 41-3807 or 41-3809, Idaho Code, and which would not have been approved had such approval been requested, the director may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the director may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(4) Whenever it appears to the director that any insurer or any director, officer, employee or agent thereof has committed a willful violation of the provisions of this chapter, the director may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state, then by the fourth judicial district court of Ada county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer who willfully violates the provisions of this chapter may be fined not more than five thousand dollars ($5,000). Any individual who willfully violates the provisions of this chapter shall be guilty of a felony and may be fined in an individual capacity of not more than five thousand dollars ($5,000) or, be imprisoned in the state penitentiary for not more than one (1) year, or both.

(5) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the director in the performance of his duties under this chapter, upon conviction thereof, shall be imprisoned for not more than one (1) year or fined five thousand dollars ($5,000), or both. Any fines imposed shall be paid by the officer, director, or employee in their individual capacity.

SECTION 31. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3817, Idaho Code, and to read as follows:

41-3817. RECEIVERSHIP. Whenever it appears to the director that any person has committed a violation of the provisions of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction for business by it hazardous to its policyholders, creditors, shareholders or the public, then the director may proceed as provided in chapter 33, title 41, Idaho Code, to take possession of the property of such domestic insurer and to conduct the business thereof.

SECTION 32. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3818, Idaho Code, and to read as follows:

41-3818. RECOVERY. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order shall have a right to recover, on behalf of the insurer:

(a) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) Any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary(ies) to a director, officer or employee, where the distribution or payment pursuant to the provisions of subsection (a) or (b) of this section is made at any time during the year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3), and (4) of this section.

(2) No such distribution shall be recoverable if the parent or affiliate shows that, when paid, such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments, under subsection (1) of this section, such person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions the person would have received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under the provisions of this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under the provisions of subsection (3) of this section is insolvent or otherwise fails to pay claims due from it pursuant to the provisions of subsection (3) of this section, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

SECTION 33. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3819, Idaho Code, and to read as follows:

41-3819. REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S LICENSE. Whenever it appears to the director that any person has committed a violation of the provisions of this chapter, which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state

for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

SECTION 34. That Chapter 38, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3820, Idaho Code, and to read as follows:

41-3820. JUDICIAL REVIEW, MANDAMUS. (1) Any person aggrieved by any act, determination, rule, regulation or order, or any other action of the director pursuant to the provisions of this chapter may appeal therefrom to the fourth judicial district court of Ada county. The court shall conduct its review in accordance with the provisions of chapter 52, title 67, Idaho Code.

(2) The filing of an appeal pursuant to the provisions of this section shall stay the application of any such rule, regulation, order or other action of the director to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

(3) Any person aggrieved by any failure of the director to act or make a determination required by the provisions of this chapter may petition the fourth judicial district court of Ada county for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

SECTION 35. That Section 41-5109, Idaho Code, be, and the same is hereby amended to read as follows:

41-5109. DUTIES OF REINSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY -- MANAGER. (1) A reinsurer shall not engage the services of any person, firm, association or corporation to act as a RM on its behalf unless such person is licensed as required in section 41-5103(2), Idaho Code.

(2) The reinsurer shall annually obtain a copy of the statement(s) of the financial condition of each RM which such reinsurer has engaged, prepared by an independent certified accountant in a form acceptable to the director.

(3) If a RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

(5) Within thirty (30) days of termination of a contract with a RM, the reinsurer shall provide written notification of such termination to the director.

(6) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its RM. The provisions of this subsection shall not apply to relation-

ships governed by chapter 38, title 41, Idaho Code, or if applicable, chapter 17, title 41, Idaho Code.

SECTION 36. For a period of twenty-four (24) months after the effective date of this act, an insurer may continue to hold any investment which was made prior to the effective date of this act and which, when made, was a lawful investment, and may carry such investment as an admitted asset at a value calculated in accordance with the provisions of the Idaho Insurance Code as in effect immediately prior to the effective date of this act. Thereafter, the investment shall be held and valued in accordance with the Idaho Insurance Code, as then in effect, and to the extent that the investment exceeds any applicable limitations contained in the Idaho Insurance Code, as then in effect, the excess investment shall not be allowed as an admitted asset of the insurer.

SECTION 37. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

Approved March 26, 1993.

CHAPTER 195
(H.B. No. 105, As Amended in the Senate)

AN ACT

RELATING TO INSURANCE AGENT LICENSING; AMENDING SECTION 41-1045, IDAHO CODE, RELATING TO LIMITED AGENT'S LICENSES TO SPECIFY THE TYPES OF INSURANCE FOR WHICH LIMITED AGENT'S LICENSES MAY BE ISSUED; AMENDING SECTION 41-1038, IDAHO CODE, TO ADD ADDITIONAL EXAMINATION REQUIREMENTS FOR LIMITED AGENT'S LICENSES; AND AMENDING SECTION 41-1046, IDAHO CODE, RELATING TO CONTINUING EDUCATION REQUIREMENTS TO CLARIFY THE CONTINUING EDUCATION REQUIREMENTS FOR AGENTS HOLDING A LIMITED AGENT'S LICENSE, AND TO CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1045, Idaho Code, be, and the same is hereby amended to read as follows:

41-1045. LIMITED AGENT'S LICENSES. ~~(1)~~ The director may issue to an applicant qualified therefor under this chapter a limited agent's ~~qualification~~ license for any one (1) or more of the following:

(~~a~~1) Covering self-propelled motor vehicle physical damage insurance ~~only~~.

(~~b~~2) To transportation ticket-selling agents of common carriers, covering personal accident insurance under ticket policies.

(~~c~~3) To transportation ticket-selling agents of common carriers, covering baggage insurance.

(~~d~~4) ~~Covering only c~~Credit life ~~or~~ and credit disability insurance ~~written under title 41, chapter 23, Idaho Code.~~

~~(2) Licensees under this section shall not hold any other licenses issued under this chapter.~~

(5) Credit property insurance covering personal effects offered as collateral for a credit transaction.

(6) Involuntary unemployment insurance in connection with a credit transaction.

SECTION 2. That Section 41-1038, Idaho Code, be, and the same is hereby amended to read as follows:

41-1038. EXAMINATION FOR LICENSE -- APPLICATION FOR EXAMINATION. (1) After completion and filing of the application for license as required under section 41-1037, Idaho Code, the director shall subject each applicant (unless exempted therefrom under section 41-1039, Idaho Code) to a personal written examination as to his competence to act as such agent, broker, solicitor or consultant.

(2) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one (1) or more of the following classifications:

(a) Life insurance and annuity contracts.

(b) Disability insurance.

(c) Credit life and credit disability insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(d) Involuntary unemployment insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(e) Credit property insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(f) Motor vehicle physical damage insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(~~e~~g) Vehicle insurance as defined in section 41-506(1)(a), Idaho Code.

(~~f~~h) Property insurance as defined in section 41-504, Idaho Code.

(~~g~~i) Marine and transportation insurance as defined in section 41-505, Idaho Code.

(~~h~~j) Casualty insurance as defined in section 41-506, Idaho Code.

(~~i~~k) Surety insurance as defined in section 41-507, Idaho Code.

(3) An applicant for license as a life broker or life consultant must take and pass an examination as to life insurance, disability insurance, and annuity contracts. An applicant for license as a general lines broker must take and pass an examination as to property, casualty, surety, and marine and transportation insurances, as identified in subsection (2) ~~above~~ of this section.

(4) An applicant for license as both a life agent or life broker and a general lines agent or general lines broker shall be separately examined as to life insurance and as to such general lines, and shall pay a separate examination application fee as to each of such two (2) examinations.

(5) If the applicant is a firm or corporation, the examination shall be taken by each individual who is to be named in or registered as to the license, as provided in section 41-1036, Idaho Code.

(6) Examination of an applicant for a solicitor's license shall cover all kinds of insurance, other than life insurance, as to which the appointing agent or broker is licensed.

(7) If the applicant for license as a life agent or life broker is to be authorized also to transact variable annuities or variable life insurance business, the applicant must take and pass an additional written examination as to such variable contracts.

(8) Written application for the examination shall be filed with the director by or on behalf of the applicant not less than ten (10) days prior to the date fixed for the examination, as provided in section 41-1041, Idaho Code, and shall be accompanied by the fee for such application as specified in section 41-401, Idaho Code (fee schedule). This application fee is earned when paid, and is not subject to refund. If the applicant does not take the examination within ninety (90) days after applying therefor, a new application and fee shall be required as to a subsequent examination.

SECTION 3. That Section 41-1046, Idaho Code, be, and the same is hereby amended to read as follows:

41-1046. CONTINUATION, EXPIRATION OF LICENSE. (1) All agent, broker, solicitor, consultant, limited agent, adjuster, and surplus line broker licenses issued under this code shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment of the applicable continuation fee to the director at his office in Boise no less often than biennially on or before the expiration date referred to in subsection (2) ~~below~~ of this section, accompanied by written request for such continuation. The continuation fees as stated in section 41-401, Idaho Code (fee schedule), are for a one (1) year continuation; and licenses continued for two (2) years shall be subject to payment of a two (2) year continuation fee. Request for continuation shall be made as follows:

(a) As to broker, consultant, adjuster, and surplus line broker licenses, request for continuation shall be made and signed by the licensee.

(b) As to solicitor licenses, request for continuation shall be made and signed by the appointing general lines agent or broker.

(c) As to agent licenses, request for continuation shall be made and signed by the licensee.

(2) The director may, in his discretion, fix the dates of expiration of respective licenses and appointments in such manner as is deemed by him to be advisable for an efficient distribution of the work load of his office. If as to a particular license or appointment the expiration date so fixed would upon first occurrence shorten the period for which license or appointment continuation fee has theretofore been paid, no refund of unearned fee shall be made; and if the expiration date so fixed as to a particular license or appointment would upon first occurrence lengthen the period for which license or appointment continuation fee had theretofore been paid, the director shall charge no additional fee for such lengthened period. If another date is not so fixed by the director, each such license shall, unless continued as hereinabove provided, expire at midnight on March 31.

(3) Any license referred to in subsection (1) ~~above~~ of this sec-

tion as to which request for continuation and fee is not so received by the director shall be deemed to have expired at midnight on the applicable expiration date. Request for continuation of any such license or payment of the continuation fee therefor which is received by the director within thirty (30) days after such expiration date may be accepted and effectuated by the director, in his discretion, if accompanied by a continuation fee of two (2) times the amount otherwise required.

(4) Subject to continuation as above provided, the license of an agent shall continue in force as long as there is in effect as to such agent, as shown by the director's records, an appointment or appointments as agent of authorized insurers covering collectively all of the kinds of insurance or classifications thereof included in the agent's license. Upon termination of all of such licensee's agency appointments as to a particular kind of insurance or classification thereof and failure to replace such appointment within sixty (60) days thereafter, the licensee's license as agent shall automatically thereupon expire and terminate as to such kind of insurance or classification and the licensee shall promptly deliver his license to the director for reissuance, without fee or charge, as to the kinds of insurance or classifications thereof, if any, covered by the licensee's remaining agency appointments. Upon termination of all of the licensee's agency appointments the license shall forthwith terminate.

(5) As a condition to or in connection with the continuation of any agent, broker or solicitor license the director may require the licensee to file with him information relative to use made of the license during the next preceding two (2) calendar years, and especially showing whether the license has been used principally for the writing of controlled business, as defined in section 41-1033, Idaho Code.

(6) All sums tendered as fee for continuation of license as agent, broker, solicitor, consultant, limited agent, adjuster and surplus line broker shall be deemed earned when paid and shall not be subject to refund; except that the director shall refund any duplicate payment of any such fee.

(7) (a) For the protection of the people of this state the director shall, by rule and regulation, establish additional educational requirements designed to maintain and improve the insurance skills and knowledge of agents, brokers, solicitors, and consultants after being duly licensed by the department of insurance. The director shall also, by rule and regulation, establish an advisory committee, comprised of representatives from each segment of the insurance industry, to assist the director in prescribing additional educational requirements and fulfilling the purposes of this legislation.

(b) The director shall not permit to be continued the license of any agent, broker, solicitor, or consultant who is licensed pursuant to section 41-1030, Idaho Code, and who is a resident of this state, unless such person has demonstrated to the satisfaction of the director that in addition to meeting the standards contained in section 41-1034, Idaho Code (qualifications for agents, brokers, and solicitors), or section 41-1035, Idaho Code (qualifications for consultants), as may be applicable, all the

additional educational requirements as the director may prescribe by regulation adopted pursuant to this subsection have been met. The provisions of this paragraph shall not apply to employees or owners of travel agencies if the employee's or owner's license allows the sale of travel or trip insurance to customers booking travel plans with the travel agency, or to a limited agent ~~whose qualification--license covers credit life insurance or credit disability insurance~~ who is licensed pursuant to ~~chapter 23, title 41~~ section 41-1045, Idaho Code, or to persons regulated or licensed by the department of finance pursuant to chapter 46, title 28, Idaho Code, national or state chartered banks, federal or state chartered savings and loan associations, or federal or state chartered credit unions dealing with insurance licensed pursuant to section 41-1045~~(1)(b), (c) and (d)~~, Idaho Code (limited agent's license).

Approved March 26, 1993.

CHAPTER 196
(H.B. No. 131)

AN ACT

RELATING TO COURT FEES; AMENDING SECTION 1-402, IDAHO CODE, TO INCREASE FEES OF THE SUPREME COURT; AND AMENDING SECTION 31-3201A, IDAHO CODE, TO INCREASE CERTAIN COURT FEES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-402, Idaho Code, be, and the same is hereby amended to read as follows:

1-402. FEES. The clerk of the supreme court shall charge, demand and receive the following fees for services rendered in discharging the duties imposed upon him by law:

For filing an appeal in each civil case appealed to the supreme court, sixty-~~four~~six dollars ($6~~4~~6.00), to be paid by appellant or cross-appellant, such fee to be in full for all services rendered or to be rendered in filing papers, entering orders or judgments, recording opinion, issuing process and sending down remittitur, unless after the decision of the court has been rendered a petition for rehearing be presented, when a fee of fifty-~~seven~~nine dollars ($5~~7~~9.00) shall be paid by the petitioner for filing such petition; for filing an application for any writ commencing an original action in said court, other than writs in habeas corpus or criminal proceedings, ~~sixty-two~~four dollars ($6~~2~~4.00), to be paid by the party presenting the application, in full for all services rendered or to be rendered, as hereinbefore designated, unless after the decision of the court a petition for rehearing be presented, when a fee of fifty-~~seven~~nine dollars ($5~~7~~9.00) shall be paid by the petitioner for filing such petition, for each certificate given at request, and under seal, two dollars and fifty cents ($2.50~~¢~~); for copy of record, opinion of the court or

other paper, an amount to be set by order of the supreme court, but an amount not less than the actual cost of preparing the copy; providing, that one (1) copy of every opinion or decision of the court shall be forthwith mailed to each litigant or his counsel in the suit or proceeding free of charge; for certificate of admission as an attorney including seal, oath and order, ~~two~~ four dollars ($~~2~~4.00); for administering oaths or affirmations, including jurat, two dollars and twenty-five cents ($2.25¢); for taking an acknowledgment or proof of a deed or other instrument, including seal and writing of the certificate, two dollars and fifty cents ($2.50¢).

SECTION 2. That Section 31-3201A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of $3~~0~~2.00 for filing a civil case of any type in the district court or in the magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both with the following exceptions:

The filing fee shall be $~~8~~10.00 in each case where the amount of money or damages or the value of personal property claimed does not exceed $300. The filing fee shall be $1~~0~~2.00 in the following types of cases:

(1) Where the amount of money or damages or the value of personal property claimed exceeds $300 but does not exceed $1,000;

(2) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;

(3) Where a case is brought under chapter 20, title 16, Idaho Code, for the termination of parent-child relationship;

(4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;

(5) Where a case involving the administration of a decedent's estate is brought under the Summary Administration of Small Estates Act;

(6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including but not limited to proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;

(7) In cases brought to determine heirship without administration;

(8) In cases brought to determine inheritance or transfer tax;

(9) In proceedings brought for adoption;

(10) In proceedings brought for letters of guardianship of the person or of the estate or both.

No filing fee shall be charged in the following types of cases:

(1) In cases brought under chapter 3, title 66, Idaho Code, for

commitment of mentally ill persons;

(2) In cases brought under the Youth Rehabilitation Act;

(3) In cases brought under the Child Protective Act.

In all cases in which a filing fee of $302.00 is paid, $17.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $135.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $102.00 is paid, $4.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $68.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $810.00 is paid, $3.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $57.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(b) A fee of $135.50 shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, or found to have committed an infraction or any minor traffic, conservation or ordinance violation except when the court orders such fee waived because the person is indigent and unable to pay such fee; provided, however, that the judge or magistrate may in his discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $810.50 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and $68.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(c) A fee of $102.00 shall be paid by any party, except the plaintiff, making an appearance in any civil action in the district court or in the magistrate's division of the district court. Of such fee, $4.00 shall be paid to the county treasurer for deposit in the district court fund of the county; and $68.00 of such fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(d) A fee of $79.00 shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the dis-

trict court fund of the county.

(e) A fee of $157.00 shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, $6.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $911.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(f) A fee of $57.00 shall be paid by an intervenor upon making an appearance in any civil action in the district court or in the magistrate's division of the district court. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(g) A fee of $68.00 shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(h) A fee of $68.00 shall be paid by any party filing a cross-claim. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(i) A fee of $79.00 shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(j) A fee of $79.00 shall be paid by any party appearing after judgment or applying to reopen a case. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(k) A fee of $79.00 shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(l) A fee of $79.00 shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(m) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(n) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(o) That portion of the filing fees required to be remitted to the state treasurer for deposit in the state general account shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer.

(p) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

Approved March 26, 1993.

CHAPTER 197
(H.B. No. 144, As Amended in the Senate)

AN ACT

RELATING TO THE FISH AND GAME COMMISSION; AMENDING SECTION 36-104, IDAHO CODE, TO REQUIRE CONSENT OF THE BOARD OF COUNTY COMMISSIONERS BEFORE THE FISH AND GAME COMMISSION MAY PURCHASE LAND IN THAT COUNTY, AND TO CORRECT A CODIFIER'S ERROR; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-104, Idaho Code, be, and the same is hereby amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization -- Meetings. The members of the commission shall annually meet at their offices in the city of Boise and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings in April, July and October of each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make an order embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of any act of God or any other sudden or unexpected emergency, declare by written order the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such emergency order shall be made in accordance with the provisions of section 67-5203, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5. (A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules and regulations as it shall prescribe.

(B) The commission may, under rules and regulations as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing owners, lessees in control of land valuable for habitat or propagation purposes of deer, elk or antelope, or members of their immediate families, to hunt deer, elk or antelope in controlled hunt units containing the eligible land owned or controlled by those individuals in areas where permits for deer, elk or antelope are limited.

(C) There shall be no fee charged to any individual for submitting an application to participate in a controlled hunt; provided, however, a permit fee of not to exceed three dollars ($3.00) for deer, ten dollars ($10.00) for moose, sheep and goat and five dollars ($5.00) for elk, antelope and such other species as may be determined in the future, shall be charged for the privilege of participating in a controlled hunt. All procedures under this section shall be under the control and in the discretion of the director of the depart-

ment of fish and game. No person shall transfer any such permit to any other person nor shall any person to make use of such permit issued to any other person.

6. Adopt rules and regulations pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is located of the intended action. The board of county commissioners shall have ten (10) days after official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

(A) For fish hatcheries, nursery ponds, or game animal or game bird farms;

(B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;

(C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;

(D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.

8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.

9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife

rearing, propagating, management, protection and demonstration projects.

10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules and regulations to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules and regulations pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules and regulations governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 1993, and the provisions of this act shall apply to all

contracts entered into between the Fish and Game Commission and a seller of real property on and after July 1, 1993.

Approved March 26, 1993.

CHAPTER 198
(H.B. No. 146, As Amended)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340, IDAHO CODE, TO EXEMPT FROM DISCLOSURE RECORDS OF LABORATORY TEST RESULTS PROVIDED BY THE DEPARTMENT OF AGRICULTURE'S QUALITY ASSURANCE LABORATORY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section mean information, including a formula, pattern, compilation, program, computer program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are

opened, or upon award of the contract for construction of the public project.

(8) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(14) Any personal records, other than names and addresses, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(15) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide stor-

age, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax.

(19) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(20) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(25) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(26) Records of hospital care, medical records, records of psy-

chiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment.

(27) Records of a person maintained pursuant to chapter 18, title 16, Idaho Code.

(28) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision making.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative council by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the office of the legislative auditor prior to release of the related final audit and all other records or materials in the possession of the office of the legislative auditor that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confi-

dentiality clearly outweighs the public interest in disclosure.

(36) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant, including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(37) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(3~~7~~8) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(3~~7~~9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(40) Records of laboratory test results provided by or retained

by the department of agriculture's quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

Approved March 26, 1993.

CHAPTER 199
(H.B. No. 152)

AN ACT

RELATING TO MOSQUITO ABATEMENT DISTRICTS; AMENDING SECTION 39-2804, IDAHO CODE, TO DELETE DUTIES OF THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 39-2805, IDAHO CODE, TO DELETE DUTIES OF THE DEPARTMENT OF HEALTH AND WELFARE; AND AMENDING SECTION 39-2807, IDAHO CODE, TO DELETE REQUIREMENTS FOR NOTICE TO BE GIVEN TO THE DEPARTMENT OF HEALTH AND WELFARE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-2804, Idaho Code, be, and the same is hereby amended to read as follows:

39-2804. POWERS AND DUTIES OF ABATEMENT DISTRICTS. The abatement district board of trustees is authorized:

a. To appoint a director to direct the activities of the district, in accordance with training and experience necessary to fulfill the duties of the position.

b. To appoint such other persons as necessary, determine their duties and compensation, and make rules and regulations respecting them.

c. To take all necessary and proper steps for the control of mosquitoes and other vermin of public health importance in the district and for these purposes shall have the right to enter upon any and all lands.

d. To sue and be sued.

e. Contract to purchase, hold, dispose of, and acquire by gift real and personal property in the name of the district. To exercise the right of eminent domain and for these purposes to condemn any necessary land and/or rights of way in accordance with general law.

f. To abate as nuisance breeding places of mosquitoes and/or other vermin of public health importance within the district or within migrating distance of the district by use of chemicals and/or permanent control measures and in this connection have the right to enter upon any and all lands.

g. To work with the lateral ditch water users associations, irrigation, drainage and flood control districts and other cooperating organizations. The board of trustees of the abatement district may supplement funds of cooperating organizations for improvement, repair, maintenance and cleaning of ditches which will temporarily or permanently eliminate mosquito breeding or for other activities which will

benefit the district.

h. To file annually with the board of county commissioners~~,--and the--director--of--the--department--of--health--and-welfare,~~ for their approval an estimate of funds required for the next year, a plan of the work to be done, and methods to be employed. No procedure, work or contract for any year of operation shall be done or entered upon until plans and budget have been jointly approved by the board of county commissioners ~~and--the--director--of--the--department--of--health--and welfare~~.

i. To file, annually or by February 1 of the succeeding year, with the board of county commissioners ~~and-the-director-of-the-department-of-health-and-welfare~~ a report setting forth the moneys expended during the previous year, methods employed, and work accomplishments.

SECTION 2. That Section 39-2805, Idaho Code, be, and the same is hereby amended to read as follows:

39-2805. METHOD OF FINANCING ABATEMENT DISTRICTS. The board of county commissioners must levy upon taxable property within the district a tax at a rate not greater than sufficient to raise the amount determined by the board of trustees as approved by the board of county commissioners, ~~and--the-director-of-the-department-of-health-and-welfare~~ as necessary for the operation of the district for the ensuing year. In no event shall such tax exceed five (5) mills per dollar of assessed property valuation. All taxes thus levied shall be collected in the same manner as other taxes and deposited to the credit of the abatement district and shall be used for no other purposes. Such funds may be withdrawn from the county treasury and upon warrant of the board of trustees of the abatement district, signed by the president of the board and countersigned by its secretary, for the activities of the abatement district.

SECTION 3. That Section 39-2807, Idaho Code, be, and the same is hereby amended to read as follows:

39-2807. CONSOLIDATION OF ABATEMENT DISTRICTS. Two (2) or more contiguous districts may be consolidated. Any district board of trustees may seek consolidation by adoption of a resolution by a majority vote of its members. Consolidation is accomplished by a majority vote of the members of each of the boards of trustees involved in the consolidation. The consolidated districts may enter into arrangements for pooling funds and joint use of personnel, equipment, and supplies. The activities conducted under joint arrangement shall be considered as if conducted directly by the board having jurisdiction over the area concerned. The board of county commissioners ~~and-the-state-department-of-health-and-welfare~~ must be given written notice of consolidation.

Approved March 26, 1993.

CHAPTER 200
(H.B. No. 153)

AN ACT

RELATING TO WATER QUALITY; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 66, TITLE 39, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO CREATE THE BIG PAYETTE LAKE WATER QUALITY COUNCIL, TO PROVIDE FOR A DECLARATION OF POLICIES AND PURPOSES, TO PROVIDE FOR MEMBERSHIP, TO PROVIDE DUTIES OF THE COUNCIL, TO PROVIDE FOR ORGANIZATION, TO PROVIDE A QUORUM, TO PROVIDE A TECHNICAL COMMITTEE, TO PROVIDE A CITIZENS COMMITTEE, TO PROVIDE FOR A LAKE MANAGEMENT PLAN, AND TO CREATE TWO ACCOUNTS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 66, Title 39, Idaho Code, and to read as follows:

CHAPTER 66
BIG PAYETTE LAKE WATER QUALITY ACT

39-6601. LEGISLATIVE INTENT. The legislature finds that the waters of Big Payette Lake and its watershed are threatened with deterioration due to expanding residential development, greater public use and growing land use activities, that these pressures may endanger the drinkability, economic potential, fisheries, natural beauty, recreational use, swimability and wildlife values of the lake; that the state holds all such public lakes in trust for the use of all its citizens; that to preserve and protect such public lakes and to increase and enhance the use and enjoyment of such lakes is in the best interest of all the citizens of the state; that natural lakes form an important basis of the state's economy and that the increasing demand upon the lake waters of this state require coordinated state and local action to protect, preserve and improve the water qualify of the lakes.

The legislature declares that it is necessary to embark upon a program of water quality protection for the lake so that future generations of Idahoans may use and enjoy it. This act creates a program to protect, preserve and, where necessary, improve the water quality of the lake while accommodating private, public and commercial activities to the extent prudent and practicable. The program as set forth in this act shall require a working partnership of federal, state and local agencies.

39-6602. DEFINITIONS. Whenever used in this chapter:

(1) "Citizens committee" means the committee named by the council consisting of members of the public.

(2) "Council" means the "Big Payette Lake Water Quality Council" established in this chapter.

(3) "Lake" means the Big Payette Lake and its watershed which

shall include all tributaries, and small lakes on those tributaries, to the North Fork of the Payette River above Big Payette Lake. The term "lake" shall also include all tributaries, and small lakes on those tributaries, that drain directly into Big Payette Lake before the dam on the North Fork of the Payette Lake as it leaves Big Payette Lake.

(4) "Plan" means the comprehensive water quality management plan for the lake to be developed after the initial study, and as modified over time.

(5) "Pollution" means water pollution as defined in section 39-103, Idaho Code.

(6) "Program" means all the actions to be performed by the council pursuant to this chapter.

(7) "Study" means the comprehensive, scientifically-based study of water quality in the lake.

(8) "Technical committee" means the advisory committee named by the council pursuant to this chapter.

39-6603. ESTABLISHMENT OF THE BIG PAYETTE LAKE WATER QUALITY COUNCIL. There is hereby created a Big Payette Lake water quality council for the lake. It shall be the responsibility of the council to develop and implement the program created in this chapter. The council shall be assisted in carrying out its responsibilities by the division of environmental quality of the department of health and welfare, the local public health district and other appropriate state and local agencies as needed.

39-6604. DECLARATION OF POLICIES AND PURPOSES. The council shall develop and implement a program that includes:

(1) The assembly of all historical data on water quality studies in the lake.

(2) An assessment of present and projected land and water uses related to the lake.

(3) The performance of a comprehensive, scientifically-based study of water quality in the lake. This study will include, but not be limited to, all point and nonpoint sources of nutrients, bacteria, sediments and potential pollution.

(4) The continued collection of important data after the initial study is completed as required by and for use in a nutrient load/lake response predictive model which shall be developed as part of the initial study.

(5) The preparation of a water quality management plan upon completion of the initial study, such plan to be updated regularly as new knowledge becomes available.

(6) The submittal of such plan to the legislature which shall accept, modify or reject the plan. The council will assist and coordinate the implementation of the accepted plan with federal, state and local authorities for two (2) years after acceptance, after which the council and its committees will disband and be succeeded by appropriate multi-agency oversight of the plan, its modification, and maintenance of the nutrient load/lake response predictive model. The city council of McCall and the Valley county commission may establish appropriate public committees to advise in matters related to the

implementation of the plan on a continuing basis.

(7) An active public participation program with stakeholders and other interested parties in the design of the study, and the preparation and implementation of the plan, from the beginning of the council's activities and until its disbandment. This program shall include regular reports to the public through forums, printed material and otherwise of lake conditions, findings of the study and progress in the development and implementation of the plan.

39-6605. MEMBERSHIP. The council shall consist of nine (9) members appointed by the governor. The governor shall appoint one (1) member who shall be a Valley county commissioner at the time of their appointment, one (1) member who shall be an elected member of the McCall city government at the time of their appointment, one (1) local resident to represent sporting interests in the area, one (1) member to represent lumbering interests in the watershed, one (1) member to represent commercial interests in Valley county, and four (4) members at large who are full or part-time residents of Valley county. The terms of the members shall be three (3) years with the initial term to be staggered in terms of one (1), two (2), and three (3) years by the governor when he makes the appointment. Vacancies shall be filled by appointment of the governor upon recommendation of the council. A majority of the members of the council must maintain their primary residence in Valley county. Once established, the council will convene to adopt rules for its operation.

39-6606. DUTIES OF COUNCIL. The council shall have the following duties:

(1) To coordinate activities related to the study of water quality in the lake, the development of a water quality management plan, and the implementation of that plan until disbandment as provided herein.

(2) To conduct a public awareness program to educate the general public on methods and responsibilities to protect the lake.

(3) To make an examination, as the council deems necessary, of environmental conditions in, upon and around the lake. The objective shall be to obtain a scientifically sound baseline study for planning future action by appropriate authorities.

(4) To undertake and complete a management plan with recommendations for the lake based upon such examination and study. The plan to be prepared shall specifically identify and address lake protection concerns upon the lake and within the surrounding watershed where land use, scenic values, water uses, residential development, wildlife habitat, fisheries, industry, commerce and other forms of human activity are both influenced by the lake and may reasonably be expected to significantly impact the water quality of the lake.

(5) To promote, until disbandment, the implementation of the plan by serving in an advisory capacity to those city, planning and zoning, county, state and federal authorities with responsibilities affecting lake management or lake water quality. The council may recommend, as appropriate, the adoption of any statutes, ordinances, rules and regulations needed to implement the plan.

(6) To consult with the public and keep the public informed

through public forums and written reports of all activities of the council.

(7) The duties of the council are ongoing and continuous until its disbandment. The council shall have the authority to complete the examination and study and prepare the plan complete with recommendations for the lake and its tributaries.

(8) The council and all its committees will automatically disband two (2) years after the plan, as and/or if, modified, is adopted by the legislature. Before disbandment, the council shall assist local, city, state and federal authorities in the establishment of a multi-agency oversight capability to succeed the council.

(9) The council shall not have any regulatory or enforcement powers.

39-6607. ORGANIZATION. (1) After appointment, the members of the council shall choose one (1) member as chairman of the council and shall elect a secretary and treasurer of the council who may or may not be members of the council. The secretary and the treasurer may be one (1) person. The secretary shall keep a record of all council proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection to all interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the council in permanent records. The treasurer shall prepare or cause to be prepared annual financial statements on a fiscal year basis ending June 30 of each year. Such financial statements shall be available for inspection by any citizen.

(3) Members of the council shall serve without compensation. No member shall receive any compensation as an employee of the council or otherwise, other than herein provided, and no member of the council shall be interested in any contract or transaction with the council except in his official representative capacity.

(4) It shall be the duty of the council to cause an audit to be made of all financial affairs of the council during each year ending June 30. A financial statement shall be certified by the person making such audit.

39-6608. QUORUM. (1) A majority of the members of the council shall constitute a quorum for the transaction of business. A majority vote of the members present shall be required to take action with respect to any matter. The vote of each member shall be individually recorded.

(2) The council may in other respects adopt its own operating procedures, which procedures shall be made available for public review.

39-6609. TECHNICAL COMMITTEE. To assist in the development of its program, the council shall create a technical committee which may include but are not exclusively limited to designated representatives of the public health district, city and county planning or engineering departments, the county planning and zoning commission, the McCall water and sewer district, department of health and welfare, department

of lands, department of fish and game, department of parks and recreation, department of water resources, state soil conservation commission, United States forest service, United States army corps of engineers, United States agricultural conservation and stabilization services, United States soil conservation service, United States geological survey, United States environmental protection agency and representatives proposed by interests in agriculture, environmental protection, forest products, sporting and mining. Indian tribes may nominate a representative for the technical committee. Members shall serve without state compensation except such normal compensation received by members who are state, city, county, district or federal employees serving in the normal course and scope of their employment.

39-6610. CITIZENS COMMITTEE. The council shall create a citizens committee comprised of citizens who express an interest in the council's program for the lake, the study and the plan. Citizens performing volunteer services in support of the council's program shall be automatic members of the citizens committee. Members of the citizens committee may meet with the council with full right to participate in all proceedings and discussions except that citizen committee members shall not be voting members.

39-6611. LAKE MANAGEMENT PLAN. (1) When the council has received and accepted the study, it shall make the same available to all appropriate and interested city, county, health district, state and federal agencies and to any interested individual or affected lake agency or association. For a period of ninety (90) days after dissemination, any interested agency or person may submit written suggestions, comments or proposals for the lake management plan or recommendations to the council.

(2) The council shall thereafter prepare a lake management plan and recommendations which shall be completed within one hundred eighty (180) days after dissemination of the examination and baseline study.

(3) The council shall identify sources and types of pollution within the planning area and identify existing and potential programs and measures by which this pollution might be abated, and summarize the past successes of these efforts, including notable voids in funding, regulatory powers or interagency coordination.

(4) The council shall identify present and future water and land uses within the watershed and comment on the implication of these various uses on the lake.

(5) Once completed, the council shall provide copies of its plan and recommendations to all agencies, persons and associations who have indicated an interest in the examination and baseline study. The council shall thereupon provide for one (1) or more public hearings upon its lake management plan and recommendations with notice given as provided in chapter 52, title 67, Idaho Code.

(6) After receiving the information obtained at the public hearing(s), the council shall make such changes and revisions as it deems necessary and within thirty (30) days after such public hearing, but in no event later than the next regular session of the Idaho legislature, the council shall submit the plan to the legislature.

(7) The legislature shall, within the next regular session during

or after which it receives the plan, accept, reject or modify the plan. Such accepted or modified plan shall have the force and effect of law.

(8) Thereafter, the council shall assist public and governmental authorities to adopt and enforce the provisions of the plan for which that authority has a responsibility. Before its disbandment, the council shall also assist these authorities to establish an ongoing joint-agency oversight responsibility for the plan and its recommendations.

39-6612. ACCOUNTS. (1) There is hereby created in the state treasury a dedicated fund known as the Payette Lake trust account. Moneys in the Payette Lake trust account may come from appropriations, grants, gifts, donations, use fees or such other sources as may be authorized by the legislature. Moneys in the account shall be exclusively for the development and implementation of the program. Moneys in the account may only be expended pursuant to appropriation, and then only as authorized by a resolution duly adopted by a majority of the council.

(2) There is hereby created in the state treasury a dedicated fund known as the Big Payette Lake water quality council administrative account. All money in the account is to be derived exclusively from private, nongovernmental funding sources. All money in the account is appropriated continuously to the council to be used exclusively to defray the costs of council administration. The account shall not be subject to the provisions of the standard appropriations act of 1945.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 201
(H.B. No. 155)

AN ACT

RELATING TO COMPUTERIZED MAPPING SYSTEM FEES; AMENDING CHAPTER 8, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-875, IDAHO CODE, TO PROVIDE THAT COUNTIES CAN CHARGE AND COLLECT A FEE FOR THE ACTUAL COST OF MAINTAINING A COMPUTERIZED MAPPING SYSTEM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 8, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-875, Idaho Code, and to read as follows:

31-875. COMPUTERIZED MAPPING SYSTEM FEES. (1) As used in this section, "computerized mapping system" or "system" means the digital

storage, processing and retrieval of cadastral information derived from local government records and related information such as land use, topography, water, streets and geographic features.

(2) In a county which develops a computerized mapping system, the board of county commissioners may impose and collect fees from the users of this system for the development, maintenance and dissemination of digital forms of the system. These fees shall not exceed the actual costs of development, annual maintenance and dissemination of the computerized mapping system. These fees shall not apply to paper maps produced from the computerized mapping system.

Approved March 26, 1993.

CHAPTER 202
(H.B. No. 161, As Amended)

AN ACT

RELATING TO THE TAX ON WORKER'S COMPENSATION PREMIUMS; AMENDING SECTION 72-523, IDAHO CODE, TO INCREASE THE TAX ON WORKER'S COMPENSATION INSURANCE PREMIUMS, TO REVISE THE AMOUNT OF DEDUCTIONS THAT MAY BE TAKEN AND TO DELETE THE ADDITIONAL PREMIUM TAX.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-523, Idaho Code, be, and the same is hereby amended to read as follows:

72-523. SOURCE OF FUND -- PREMIUM TAX. The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall semiannually, within thirty (30) days after February 1 and July 1 of each year, pay into the state treasury to be deposited in the industrial administration fund a premium tax as follows:

(1) Commencing July 1, 1993, ~~e~~Every surety, other than self-insurers authorized to transact worker's compensation insurance, a sum equal to ~~one~~ two and ~~three-tenths--per--cent~~ one-half percent (~~1-3/10~~2.5%) of the net premiums written by each respectively on worker's compensation insurance in this state during the preceding six (6) months' period, but in no case less than ~~fifty~~ seventy-five dollars ($~~5~~750.00); and

(2) Each self-insurer, a sum equal to ~~one~~ two and ~~three-tenths per-cent~~ one-half percent (~~1-3/10~~2.5%) of the amount of premium such employer who is a self-insurer would be required to pay as premium to the state insurance fund, but in no case less than ~~fifty~~ seventy-five dollars ($~~5~~750.00).

(3) Any insurer making any payment into the industrial administration fund under the provisions of subsection (1) of this section shall be entitled to deduct ~~the full sum so paid~~ one and three-tenths percent (1.3%) of the net premiums written as computed above from any

sum that it is required to pay into the department of insurance as a tax on worker's compensation premiums.

(4) ~~Computed upon the same basis as provided in subsections (1) and (2) of this section and payable at the time specified in this section, each surety and self-insurer shall pay a special and additional premium tax of four-tenths per cent (4/10%) covering the period July 1, 1974, through December 31, 1974, and thereafter seven-tenths per cent (7/10%) for the purpose of funding and administering a rehabilitation program and division within the commission as provided by law. In no case shall such special and additional premium tax be less than twenty-five dollars ($25.00) nor shall the amount paid for such purpose be deductible by sureties from any sums paid into the department of insurance as a tax on worker's compensation premiums.~~

~~(5)~~ In arriving at net premiums written, dividends paid, declared or payable shall not be deducted.

(6~~5~~) For the purposes of this section and section 72-524, Idaho Code, net premiums written shall mean the amount of gross direct premiums written, less returned premiums and premiums on policies not taken.

Approved March 26, 1993.

CHAPTER 203
(H.B. No. 165)

AN ACT

RELATING TO REPORTS OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES; AMENDING SECTION 67-6607, IDAHO CODE, TO REVISE THE TIME PERIOD WHEN REPORTS MUST BE FILED AND TO REVISE PROCEDURES; AMENDING SECTION 67-6608, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AND AMENDING SECTION 67-6625A, IDAHO CODE, TO INCREASE FINES AND TO PROVIDE THE EFFECT OF REMEDIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6607, Idaho Code, be, and the same is hereby amended to read as follows:

67-6607. REPORTS OF CONTRIBUTIONS AND EXPENDITURES. (a) The political treasurer for each candidate and the political treasurer of each political committee shall file with the secretary of state:

(1) Not more than fourteen (14) days and not less than seven (7) days before the date of a primary election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee prior to the fifteenth day before the primary election;

(2) Not more than thirty (30) days after the date of a primary election in which a candidate or a political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or

political committee to cover the period since the fifteenth day before the primary election to and including the tenth day after the primary election;

(3) For all political committees supporting or opposing measures, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the measure or made by or against the measure shall be filed on April 30 and July 30 of each year to cover the period since the preceding report, if any, has been filed. Such committees shall also file the statements required in subsections (4), ~~and~~ (5) and (6) of this section; provided, that the statement required in subsection (4) shall cover the period from July 1 to and including the sixteenth day before the general election;

(4) Not later than October 10 immediately preceding a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee since and including the eleventh day after the date of the primary election and to and including September 30;

(5) Not more than fourteen (14) days and not less than seven (7) days before the date of a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee since and including ~~the eleventh day after the date of the primary election~~ October 1 and to and including the sixteenth day before the general election, together with a cumulative statement showing all such contributions and expenditures or encumbrances to and including the fifteenth day before the general election; and

(~~5~~6) Not more than thirty (30) days after the date of a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee to cover the period since the fifteenth day before the general election to and including the tenth day after the general election.

(b) For the first report under this section the reporting period shall cover the period beginning with the first contribution, expenditure, or encumbrance.

(c) Notwithstanding any other reports required under this section, the political treasurer for each candidate and any political committee supporting or opposing a measure shall notify the secretary of state, in writing, of any contribution of one thousand dollars ($1,000) or more, received by the political treasurer after the sixteenth day before, but more than forty-eight (48) hours before, any primary or general election. This notification shall be made within forty-eight (48) hours after the receipt of such contribution and shall include the name of the candidate or measure, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions in the post election report.

(d) For all reports required pursuant to this section the secretary of state shall accept the date of a postmark as the date of

receipt except for the seven (7) day pre-election reports which must be received by no later than 5:00 p.m. on the seventh day preceding the primary or general election.

(e) Any reports required to be filed under the provisions of this section may also be filed by means of an electronic facsimile transmission machine.

SECTION 2. That Section 67-6608, Idaho Code, be, and the same is hereby amended to read as follows:

67-6608. DISPOSITION OF UNEXPENDED BALANCES. (a) If a statement filed under paragraph (3) of subsection (a) of section 67-6607, Idaho Code, pertaining to post-general election reports or under paragraph (~~5~~6) of subsection (a) of section 67-6607, Idaho Code, shows an unexpended balance of contributions or an expenditure deficit, the political treasurer for the candidate or political committee or measure shall continue to file annual reports on January 31, to cover the period since the end of the last report period, to and including the last day of the month preceding the month in which the report is filed. Such reports shall be filed until the account shows no unexpended balance of contributions or expenditure deficit.

(b) If a candidate wins nomination, supplemental statements under subsection (a) of this section need not be filed with respect to the nomination campaign by the political treasurer of a political committee supporting the candidate or by the political treasurer for such candidate, if such political committee continues to function in support of such candidate in the campaign for the general or special election.

(c) A political committee which is organized after an election shall file reports required by subsection (a) of this section.

SECTION 3. That Section 67-6625A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6625A. LATE FILING OF STATEMENT OR REPORT -- FEES. If any person fails to file a report or statement on or before a specified date, he shall be liable in ~~the~~ an amount of ~~ten~~ fifty dollars ($~~1~~50.00) per day after the deadline until the statement or report is filed, to the secretary of state. Liability need not be enforced by the secretary of state if on an impartial basis he determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within five (5) days after receiving written notice of the filing requirement from the secretary of state.

~~The--failure--to--file--a-report-or-statement-within-five-(5)-days after-receiving-notice-from-the-secretary-of--state--may--subject--the person--required--to-file-such-report-to-the-additional-penalties-prescribed-in-section-67-6625,-Idaho-Code~~ The remedy provided in this section is cumulative and does not exclude any other remedy or penalty prescribed in section 67-6625, Idaho Code.

Approved March 26, 1993.

CHAPTER 204
(H.B. No. 169)

AN ACT

RELATING TO IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS; AMENDING SECTION 54-3003, IDAHO CODE, TO ELIMINATE THE CAP ON THE NUMBER OF YEARS A BOARD MEMBER MAY SERVE, TO ALLOW EXAMINATION FEES TO BE ESTABLISHED BY BOARD RULE AND TO INCREASE THE ANNUAL RENEWAL FEE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-3003, Idaho Code, be, and the same is hereby amended to read as follows:

54-3003. QUALIFICATIONS -- EXAMINATIONS -- BOARD -- CERTIFICATES OF REGISTRATION -- FEES -- RECIPROCITY -- EXEMPTIONS -- INDIVIDUALS, PARTNERSHIPS AND CORPORATIONS -- RESTRICTION ON USE OF NAME -- SEAL. (a) Application and practice. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this act.

(b) Qualifications. For license as a landscape architect, evidence must be submitted to the board that the applicant:

(1) is eighteen (18) years of age or older;

(2) has, before admission to the examination, completed the course of study in and been graduated from a college or school of landscape architecture approved by the board. He shall also submit, before admission to the examination, evidence of actual practical experience in landscape architectural work of grade and character satisfactory to the board. Each complete year of study in such approved college or school of landscape architecture may be accepted in lieu of one (1) year of such experience, and the applicant must submit evidence of sufficient additional acceptable experience to total four (4) years of combined education and experience. In lieu of graduation from an accredited college or school of landscape architecture, and the practical experience in addition thereto, an applicant may be admitted to the examination upon presenting evidence of at least four (4) years of actual, practical experience in landscape architectural work of a grade and character satisfactory to the board.

(c) Examinations. Examinations for the license shall be held by the board at least once each year, provided that applications shall have been received during the time announced. The board shall adopt rules and regulations covering the subjects and scope of the examinations at the times designated. Every applicant for license as a landscape architect shall be required, in addition to all other requirements, to establish by written examination his competency to plan, design, specify, and supervise the installation of landscape projects. Each written examination may be supplemented by such oral examinations as the board may determine.

(d) The board. There is hereby created in the department of self-governing agencies an Idaho state board of landscape architects. The board shall consist of three (3) landscape architects. Members of the board shall be appointed by the governor and must be residents of this state, have the qualifications of landscape architects required by this act, and after the initial board is organized be licensed hereunder. The terms of the members of the board first appointed shall expire as follows:

Two (2) members two (2) years later, one (1) member three (3) years later. Thereafter, appointments shall be for four (4) year terms. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment in like manner for the unexpired term. ~~No member shall serve more than eight (8) consecutive years.~~ The board may by written agreement authorize the bureau of occupational licenses to act as agent in its interest, and shall have the power to make such rules and regulations as shall be necessary in the performance of its duties. The board shall elect, at its first meeting of every calendar year, from its members, a president, and a secretary who may or may not be a member of the board. The secretary shall hold such office at the pleasure of the board and shall receive a salary fixed by the board. In carrying out the provisions of this act, all members of the board shall be compensated as provided by section 59-509(g), Idaho Code. Payment of travel and other expenses shall be made from the occupational licenses fund.

(e) Revenue. Certificates of registration shall expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the board of the required fee.

(1) In case any registrant fails to pay the renewal fee before thirty (30) days after the due date, the renewal fee shall be the current fee plus an amount set by the board; provided, that any registrant in good standing, upon fully retiring from landscape architectural practice, may withdraw from practice by giving written notice to the board and may thereafter resume practice at any time upon payment of the then current renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration for a period of one (1) year may be reinstated only on reexamination as is required for new registrants, or reciprocity. The board shall issue a receipt to each landscape architect promptly upon payment of the annual license fee.

(2) Amounts. The amount of fees shall be as determined by the board within the following stated limits:

(A) The application fee not to exceed one hundred dollars ($100).

(B) The fee for examination to be established by board rule not to exceed ~~four hundred dollars ($400)~~ that charged by the council of landscape architectural registration board plus a twenty-five dollar ($25.00) processing fee.

(C) The fee for an original certificate and the annual license fee not to exceed ~~eighty~~ one hundred twenty-five dollars (~~$80.00~~125).

(3) Refund. Fees shall be nonrefundable.

(4) Deposit. All fees received under the provisions of this act shall be deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred by the board under the provisions of this act shall be a charge against and paid from said fund for such purposes, and the funds collected hereunder shall be immediately available for the administration of this act, the provisions of any other law notwithstanding. In no instance will the occupational licenses fund be obligated to pay any claims which in aggregate with claims already paid exceed the income to the occupational licenses fund which has been derived by the application of this act.

(5) Appropriation. The money paid into the occupational licenses fund is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this act.

(f) Reciprocal provisions. The board may certify for registration with limited examination an applicant who is legally registered as a landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state.

(g) Exemptions. (1) None of the provisions of this act shall prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control or supervision of their employers.

(2) None of the provisions of this act shall apply to the business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, gardener, landscape gardener, landscape designer, or landscape contractor, as these terms are generally used, or any other person, including, but not limited to, their right to plan and supervise in connection therewith, except that no such person shall use the designation "landscape architect," "landscape architecture," or any description tending to convey the impression that he is a registered landscape architect unless he is registered as provided in this act.

(3) This act shall not apply to architects, professional engineers, geologists, and land surveyors, licensed to practice their respective professions.

(h) Act applies to natural persons only.

(1) All certificates of registration shall be issued to natural persons only but nothing contained in this act shall prevent a duly registered landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Partners. Each partner in a partnership of landscape architects shall be registered to practice. Subject to this requirement, a partnership of landscape architects may use a partnership name if such name consists of:

(A) The names of two (2) or more landscape architects.

(B) The names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) Any person applying to the licensing official of any county or city for a business license to practice landscape architecture shall at the time of such application exhibit to such licensing official satisfactory evidence under the seal of the board and the

hand of its secretary that such applicant possesses a current registration. The license shall not be granted until such evidence is presented, any contrary provision of any special act or general act notwithstanding.

(i) Qualifications for practice -- seal:

(1) No person shall use the designation "landscape architect" or "landscape architecture," or advertise any title or description tending to convey the impression that he is a landscape architect, or practicing landscape architecture, unless such person is a registered landscape architect. Every holder of a registration certificate shall display it in his principal office, place of business, or place of employment.

(2) Every landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Registered Landscape Architect, State of Idaho," and such other words or figures as the board may deem necessary and prescribe. All drawings and title pages of specifications, prepared by such landscape architect or under the supervision of such landscape architect, shall be stamped with the aforesaid seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer or a licensed land surveyor.

Approved March 26, 1993.

CHAPTER 205
(H.B. No. 170)

AN ACT

RELATING TO THE COUNSELOR LICENSING BOARD; AMENDING SECTION 54-3404, IDAHO CODE, TO UPDATE THE CURRENT CODE OF ETHICS FOR COUNSELORS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-3404, Idaho Code, be, and the same is hereby amended to read as follows:

54-3404. COUNSELOR LICENSING BOARD -- POWERS. The board shall have the following powers:

(1) To regulate the practice of licensed counselors and licensed professional counselors in the state of Idaho.

(2) To pass upon the qualifications and fitness of applicants for licenses.

(3) To adopt and from time to time revise such rules and regulations as may be necessary to carry into effect the provisions of this chapter. Such rules and regulations shall include, but not be limited to, ~~the American Personnel and Guidance Association~~ a code of ethics for licensed counselors in the state ~~and~~ which shall be adopted in compliance with chapter 52, title 67, Idaho Code.

(4) To review the practice of counselors licensed under this

chapter and charged with a violation of the provisions of this chapter. This review may include the notes of the counselor and other materials related to the practice. The review will remain subject to disclosure according to chapter 3, title 9, Idaho Code, unless the written consent of the client is received by the board.

(5) To establish a peer review system whereby each licensed counselor's practice may be reviewed to ensure continuing practice in an appropriate and ethical manner.

(6) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of counselor applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(7) To conduct hearings to suspend or revoke licenses for violations of the law and rules and regulations adopted pursuant to this chapter and cause the prosecution and enjoinder of all such violations.

(8) In any proceeding before the board authorized by this chapter, the board or its designee may administer oaths or affirmations to witnesses appearing before it.

(9) To authorize, by written agreement, the chief of the bureau of occupational licenses as agent to act in its interest.

Approved March 26, 1993.

CHAPTER 206
(H.B. No. 173)

AN ACT

RELATING TO THE CORNER PERPETUATION AND FILING ACT; AMENDING SECTIONS 55-1601, 55-1602, 55-1603, 55-1604, 55-1605, 55-1607, 55-1608, 55-1609 AND 55-1611, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; REPEALING SECTION 55-1610, IDAHO CODE; AMENDING SECTION 55-1612, IDAHO CODE, TO PROVIDE PENALTIES FOR FAILURE TO INDICATE THE PRESENCE OF CORNERS ON PREPARED PLANS; AND AMENDING SECTION 55-1613, IDAHO CODE, TO PROVIDE A DEFINITION FOR ADEQUATE EVIDENCE OF A LAND SURVEY MONUMENT, AND TO PROVIDE PENALTIES FOR FAILURE TO INDICATE THE PRESENCE OF CORNERS ON PREPARED PLANS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 55-1601, Idaho Code, be, and the same is hereby amended to read as follows:

55-1601. SHORT TITLE. This ~~act~~ chapter may be cited as the "Corner Perpetuation and Filing ~~Act~~ Law."

SECTION 2. That Section 55-1602, Idaho Code, be, and the same is hereby amended to read as follows:

55-1602. DECLARATION OF POLICY. It is the purpose of this ~~act~~ chapter to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the

systematic establishment of monuments and filing of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification; and thereby eliminating the repeated necessity for reestablishment and relocations of such corners once they are established and located.

SECTION 3. That Section 55-1603, Idaho Code, be, and the same is hereby amended to read as follows:

55-1603. DEFINITIONS. Except where the context indicates a different meaning, terms used in this ~~act~~ chapter shall be defined as follows:

(a) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(b) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(c) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(d) A "corner," unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(e) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(f) A "monument" is a physical structure that occupies the exact position of a corner.

(g) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

(h) A "professional land surveyor" means any person who is authorized by the laws of this state to practice land surveying.

(~~k~~i) The "board" is the board of registration of professional engineers and professional land surveyors.

SECTION 4. That Section 55-1604, Idaho Code, be, and the same is hereby amended to read as follows:

55-1604. FILING REQUIREMENTS. A professional land surveyor shall complete, sign, and file with the county clerk and recorder of the county where the corner is situated, a written record of the establishment or restoration of a corner. This record shall be known as a "corner record" and such a filing shall be made for every public land survey corner and accessory to such corner which is established,

reestablished, monumented, remonumented, restored, rehabilitated, perpetuated or used as control in any survey. The survey information shall be filed within ninety (90) days after the survey is completed, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this ~~act~~ chapter.

In lieu of filing as heretofore provided, corner records may be recorded by photographic process in those counties which have such facilities.

SECTION 5. That Section 55-1605, Idaho Code, be, and the same is hereby amended to read as follows:

55-1605. FILING OR RECORDING. A professional land surveyor may file or record any corner record as to any property corner, property controlling corner, reference monument or accessory to a corner.

SECTION 6. That Section 55-1607, Idaho Code, be, and the same is hereby amended to read as follows:

55-1607. COUNTY CLERK TO KEEP RECORD -- FEES. (a) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order; provided, however, corner records may also be preserved in the same manner as any other recorded instruments in those counties where corner records are recorded in lieu of filing.

(b) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(c) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to the filing or recording of instruments as provided in section 31-3205, Idaho Code. However, all corners, monuments and their accessories established prior to the effective date of this ~~act~~ chapter, for which a written record is completed as required herein, and which are offered for filing or recording within six (6) months of the effective date of this ~~act~~ chapter, shall be accepted and filed by the county clerk without requiring the payment of fees therefor.

SECTION 7. That Section 55-1608, Idaho Code, be, and the same is hereby amended to read as follows:

55-1608. ~~SURVEYOR~~ PROFESSIONAL LAND SURVEYOR TO RECONSTRUCT MONUMENTS. In every case where a corner record of a survey corner is required to be filed or recorded under the provisions of this ~~act~~ chapter, the professional land surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner, so that it will be as permanent a monument as is reasonably possible to provide and so that it may be located with facility at any time in the future.

Any monument set shall be permanently marked or tagged with the certificate number of the ~~responsible~~ professional land surveyor in responsible charge. If the monument is set by a public officer, it

shall be marked by an appropriate official designation.

SECTION 8. That Section 55-1609, Idaho Code, be, and the same is hereby amended to read as follows:

55-1609. TO BE SIGNED BY PROFESSIONAL LAND SURVEYOR OR GOVERNMENT AGENT. No corner record shall be filed or recorded unless the same is signed by a professional land surveyor as defined herein, or, in the case of an agency of the United States government, the certificate may be signed by the survey party chief making the survey.

SECTION 9. That Section 55-1610, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 55-1611, Idaho Code, be, and the same is hereby amended to read as follows:

55-1611. FEDERAL GOVERNMENT FILINGS WITHOUT FEES. All federal government surveys performed by authorized personnel of agencies of the federal government shall not be subject to the provisions of this ~~act~~ chapter, except that federal agencies may comply with the ~~act's~~ provisions of the chapter, and shall be exempt from filing fees required in section 55-1607(c), Idaho Code.

SECTION 11. That Section 55-1612, Idaho Code, be, and the same is hereby amended to read as follows:

55-1612. PENALTY. Professional land s~~S~~urveyors failing to comply with the provisions hereof and engineers who prepare plans which do not indicate the presence of corners for which a form has been filed shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to ~~the revocation or suspension of their certificate~~ disciplinary action as in said section provided. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare plans for the construction of any facility and construction of that facility results in the defacing, injury or removal of a monument, if the plans they prepare do not indicate the presence of a corner or corners for which a form has been filed.

SECTION 12. That Section 55-1613, Idaho Code, be, and the same is hereby amended to read as follows:

55-1613. MONUMENTS DISTURBED BY CONSTRUCTION ACTIVITIES -- PROCEDURE -- REQUIREMENTS. When adequate evidence exists as to the location of a public land survey corner, subdivision, tract, or other land corners, such monuments shall be referenced by or under the direction of a professional land surveyor prior to the time when construction or other activities may disturb them. Such corners shall be reestablished and remonumented under the supervision of a professional land surveyor. Adequate evidence of the location of a land survey monument shall include the visual presence of the monument, existence of a federal general land office or bureau of land management plat on which the monument appears, a recorded corner perpetuation and filing form

as provided in this chapter, a record of survey filed in accordance with chapter 19, title 55, Idaho Code, on which the monument appears, or a subdivision plat filed in accordance with chapter 13, title 50, Idaho Code, on which the monument appears. Engineers who prepare plans which do not indicate the presence of corners for which adequate evidence exists shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as provided in said section. Any person shall be subject to the penalties prescribed in section 54-1234, Idaho Code, if they prepare plans for the construction of any facility and construction of that facility results in the defacing, injury or removal of a monument, if the plans they prepare do not indicate the presence of a corner or corners for which a form has been filed.

Approved March 26, 1993.

CHAPTER 207
(H.B. No. 179, As Amended, As Amended)

AN ACT

RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-421, IDAHO CODE, TO ADD CIVIL PENALTY AUTHORITY AND TO INCREASE THE FINE FOR A MISDEMEANOR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-421, Idaho Code, be, and the same is hereby amended to read as follows:

22-421. VIOLATIONS, PROSECUTIONS AND PENALTIES. (1) ~~Every violation~~ Any person who violates or fails to comply with any of the provisions of this chapter shall be ~~deemed~~ guilty of a misdemeanor ~~punishable by a~~ and upon conviction thereof shall be fined not ~~exceeding one thousand dollars ($1,000) and up to one (1) year~~ more than three thousand dollars ($3,000) or be imprisoned in the county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

Violations shall include, but are not limited to, mislabeling of variety, mislabeling prohibited noxious weed seeds, exceeding restricted noxious weed tolerances, failure to keep records as specified in section 22-419, Idaho Code, mislabeling purity or germination percentages, and any other intentional mislabeling.

When the director or his authorized agents shall find that any person has violated any of the provisions of this chapter, he or his duly authorized agents may institute proceedings in a court of competent jurisdiction in the county in which the violation occurred, or the director may file with the attorney general such evidence as may be deemed necessary; provided, however, that the director may permit the defendant to appear before the director to introduce evidence either in person or by agent or attorney at a private hearing. If, after such hearing, or without such hearing in case the defendant or

his agent or attorney fails or refuses to appear, the director is of the opinion that the evidence warrants prosecution, he shall proceed as herein provided.

It shall be the duty of the prosecuting attorney of the county in which the violation occurred to institute proceedings at once against any person charged with a violation of this chapter, if, in the judgment of the officer the information submitted warrants action.

After judgment by the court in any case arising under this chapter, the director shall publish any information pertinent to the issuance of the judgment by the court in such media as he may designate from time to time.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any regulations promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than two thousand dollars ($2,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule or regulation shall be remitted to the agricultural inspection seed testing account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when the director believes that the public interest will be best served by suitable warnings or other administrative action.

Approved March 26, 1993.

CHAPTER 208
(H.B. No. 196)

AN ACT

RELATING TO TELEPHONE CORPORATION TARIFFS OR PRICE LISTS; AMENDING SECTION 62-606, IDAHO CODE, TO PERMIT CERTAIN CHANGES TO TARIFFS OR PRICE LISTS FOR NON-RECURRING SERVICES THAT ARE QUOTED DIRECTLY TO THE CUSTOMER, OR CHANGES THAT RESULT IN PRICE REDUCTIONS, TO BECOME EFFECTIVE IMMEDIATELY UPON FILING WITH THE PUBLIC UTILITIES COMMISSION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 62-606, Idaho Code, be, and the same is

hereby amended to read as follows:

62-606. REQUIREMENT FOR PRICE LIST OR TARIFF FILING. All telephone corporations which provide message telecommunication services, WATS service or access to their local exchange network for the provision of such services by the use of special access or private line access and switched access, or their equivalents, shall file with the commission, for information purposes, tariffs or price lists which reflect the availability, price, and terms and conditions for those services. Changes to such tariffs or price lists, except as hereinafter provided, shall be effective not less than ten (10) days after filing with the commission, and giving public notice to affected customers. Changes to tariffs or price lists that are for non-recurring services and that are quoted directly to the customer when an order is placed, or changes that result in price reductions, shall be effective immediately upon filing with the commission and no other public notice shall be required.

Approved March 26, 1993.

CHAPTER 209
(H.B. No. 198)

AN ACT

RELATING TO IRRIGATION DISTRICTS; AMENDING CHAPTER 11, TITLE 43, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 43-1120 AND 43-1121, IDAHO CODE, TO PROVIDE FOR FILING FOR RECORD ORDERS OF REINSTATEMENT; TO PROVIDE FOR NOTICE OF INTENDED CONSTRUCTION AND TIME FOR FILING WRITTEN REQUEST; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 11, Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 43-1120, Idaho Code, and to read as follows:

43-1120. REINSTATEMENT OF NONAGRICULTURAL LANDS -- ORDER -- FILING FOR RECORD. Where lands which have been excluded from an irrigation district as not agricultural subsequently are included in the area to be served by a distribution system proposed to be constructed under authority of either section 43-329 or 43-333, Idaho Code, or under any law authorizing a local improvement district, and the owner or owners of the excluded lands desire to receive irrigation water through the proposed distribution system or through a distribution system already constructed under either such authority, the owner or owners may file with the secretary of the irrigation district a written request, signed and acknowledged in the manner required for conveyances of real property, that the lands be reinstated by the irrigation district. Upon receipt of such a request, and if the water rights formerly appurtenant to the lands have not been formally allocated or

transferred to other lands, the board of directors of the irrigation district, in its discretion, may enter an order declaring that the lands are reinstated to their former status, including the water rights, and directing the assessor of the irrigation district to enter the lands on the assessment roll. A copy of the order or resolution of reinstatement, certified by the president and secretary of the district, shall be filed for record in the office of the county recorder of each county wherein any portion of the reinstated land is situated.

SECTION 2. That Chapter 11, Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 43-1121, Idaho Code, and to read as follows:

43-1121. NOTICE OF PROPOSED CONSTRUCTION OF DISTRIBUTION SYSTEM -- TIME FOR FILING WRITTEN REQUEST. Prior to construction of a distribution system under the authority of either section 43-329 or 43-333, Idaho Code, or under any law authorizing a local improvement district, an irrigation district shall mail a notice of the intended construction to the current owner of any lot or parcel within the area to which irrigation water can be delivered by that distribution system, which previously had been excluded from the district as not agricultural. The notice shall state that the lot or parcel may be eligible for reinstatement, with water rights, if the owner so requests in writing, properly signed and acknowledged, and shall specify the date, not less than three (3) weeks after mailing of the notice, after which the irrigation district may decline to consider the request.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 210
(H.B. No. 223)

AN ACT

RELATING TO DESIGNATION OF THE COUNTY FAIR BOARD AS AN ADVISORY BODY; AMENDING SECTION 22-202A, IDAHO CODE, TO PROVIDE THAT IN COUNTIES WITH A POPULATION OF TWO HUNDRED THOUSAND OR MORE THE COUNTY COMMISSIONERS MAY PROVIDE THAT THE COUNTY FAIR BOARD FUNCTION AS AN ADVISORY BOARD TO THE COUNTY COMMISSIONERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-202A, Idaho Code, be, and the same is hereby amended to read as follows:

22-202A. DESIGNATION OF COUNTY FAIR BOARD AS ADVISORY BODY. In counties with a population of ~~one~~ two hundred thousand (~~1~~200,000) per-

sons or more, the board of county commissioners may provide by ordinance that the county fair board shall function as an advisory board to the board of county commissioners. If such an ordinance is adopted, the board of county commissioners shall retain and may exercise the powers, duties, and responsibilities otherwise charged to the county fair board by the provisions of this chapter. Any such ordinance shall set forth the powers, duties, responsibilities, compensation, and terms of office of the county fair board and may provide for any such other rules and regulations under which the county fair board shall advise the board of county commissioners and conduct its operations. Any such ordinance may be repealed at any time, and if repealed, the provisions of this chapter shall apply as if no such ordinance had been adopted. The provisions of this section shall not be applicable to fair districts in two (2) or more counties organized pursuant to chapter 3, title 22, Idaho Code.

Approved March 26, 1993.

CHAPTER 211
(H.B. No. 277)

AN ACT

RELATING TO THE POWERS AND DUTIES OF THE IDAHO POTATO COMMISSION; AMENDING SECTION 22-1207, IDAHO CODE, TO AUTHORIZE THE COMMISSION TO ADMINISTER OATHS, CERTIFY OFFICIAL ACTS AND TO ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF PAPERS, BOOKS, ACCOUNTS, DOCUMENTS AND TESTIMONY, TO PROVIDE A PROCEDURE FOR ENFORCEMENT OF SAID SUBPOENAS IN THE DISTRICT COURT IN THE NATURE OF CONTEMPT PROCEEDINGS, TO PROVIDE THE OPPORTUNITY FOR A SHOW CAUSE HEARING TO A WITNESS WHO REFUSES TO OBEY A SUBPOENA AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-1207, Idaho Code, be, and the same is hereby amended to read as follows:

22-1207. POWERS AND DUTIES OF COMMISSION. The powers and duties of the commission shall include the following:

1. To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules, regulations and orders for the exercise of its powers and the performance of its duties under this act.

2. To contract and be contracted with.

3. To employ and at its pleasure discharge an advertising manager, agents, advertising agencies and such other help as it deems necessary and to outline their powers and duties and fix their compensation.

4. To make in the name of the commission such advertising contracts and other agreements as may be necessary.

5. To keep books, records and accounts of all its doings, which

books, records and accounts shall be open to inspection and audit by the state auditor at all times.

6. To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this act.

7. To define and describe such grade or grades of potatoes that may be advertised in accordance with the provisions of this act.

8. To define and designate the character of the brands, labels, stencils, or other distinctive marks under which said potatoes may be marketed in order to secure the greatest returns to producers and meet the requirements of their advertising campaign.

9. To devise and arrange for the application of either a seal, label, brand, package, or any other suitable device that will protect the identity of the original Idaho pack of potatoes as near to the final consumer as possible.

10. Whenever and wherever it deems it to be necessary the commission shall use its offices to prevent any substitution of other potatoes for Idaho potatoes and to prevent the misrepresentation or the misbranding of Idaho potatoes at any and all times at any and all points where they discover the same is being done.

11. To make, conduct or carry on studies and research in connection with the raising, production and marketing of potatoes, including study and research dealing with the industrial and other uses of potatoes and their by-products, and the extension and stabilization of markets for such commodities; to disseminate information with respect to such study and research as a part of the commission's advertising, publicity and sales promotion activities authorized by this act and to assist, aid and educate growers, dealers and handlers in the raising, production and marketing of potatoes.

12. To require all persons with their principal place of business located in the state of Idaho to pay a one hundred dollar ($100) annual license fee for use of any Idaho potato trade or certification mark and to require all persons with their principal place of business located outside of the state of Idaho to pay a three hundred dollar ($300) annual license fee for use of any Idaho potato trade or certification mark.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntary, engaged in carrying on similar activities and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated; provided, however, expenditures authorized by the commission for the purposes herein mentioned shall not exceed an amount equal to twelve and one-half per cent (12 1/2%) of the tax collected on potatoes levied and imposed pursuant to section 22-1211, Idaho Code.

Provided, further, that none of the powers specified in subsection 11 of this section shall be exercised, and no expenditure of revenue as provided in ~~this~~ subsection 11 of this section shall be autho-

rized except upon the affirmative vote of six (6) or more of the members of the commission.

13. The commission, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The commission may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the commission, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he had not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission and regularly served, the court shall thereupon order that said witness appear before the commission at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 212
(H.B. No. 280)

AN ACT

RELATING TO IRRIGATION DISTRICTS; AMENDING SECTION 43-2301, IDAHO CODE, TO AUTHORIZE THE CONTRACTING OF INDEBTEDNESS WITH A MONEY LENDING INSTITUTION AND TO AUTHORIZE THE DISTRICT TO UTILIZE ALTERNATIVE SOURCES OF PAYMENT FOR BONDS OR INDEBTEDNESS; AND AMENDING SECTION 43-2305, IDAHO CODE, TO PROVIDE FOR THE CONTRACTING OF INDEBTEDNESS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 43-2301, Idaho Code, be, and the same is hereby amended to read as follows:

43-2301. RECONSTRUCTION OF DAMS, CANALS AND OTHER IRRIGATION DISTRICT WORKS AND RELATED APPURTENANCES -- HYDROELECTRIC FACILITIES -- EXECUTION OF CONTRACTS -- REVENUES -- TRUSTS. Any irrigation district organized and existing under the provisions of title 43, Idaho Code, in addition to any other powers which it might enjoy, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which such district and other like similarly situated districts were organized, is hereby granted the following additional powers:

(a) To provide for or to reconstruct, rehabilitate, replace, modify or improve dams, canals and other irrigation district works, including the construction, enlargement and replacement of outlet and intake tunnels and structures, and other related structures and works together with all necessary appurtenances related thereto, whether located within or without the boundaries of the district and whether or not legal title thereto is owned by the district, including without limitation as a part thereof the reconstruction and relocation of all roads, bridges and highways made necessary by reason of such reconstruction, rehabilitation, replacement, modification or improvement, or the construction of hydroelectric generating facilities as authorized in subsection (b) of this section, and in connection therewith the acquisition of related facilities for flood control, public recreation, and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements;

(b) To provide for or to construct hydroelectric generating facilities, properties and related structures in connection with and as a part of the reconstruction, rehabilitation, replacement, modification or improvement of a dam, a canal or other irrigation district works pursuant to subsection (a) of this section, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, penstocks, transformers, electrical equipment and other facilities related to hydroelectric production plants;

(c) To enter into all necessary agreements, contracts and other legal arrangements with the United States and its agencies, other irrigation districts organized and existing under the provisions of title 43, Idaho Code, and other public and private persons, firms, corporations and associations, and irrigation districts similar to those existing under title 43, Idaho Code, but organized and existing under the laws of another state of the United States, in order to carry out or provide for the reconstruction, rehabilitation, replacement, modification or improvement of any such dam, canal or other irrigation district works and other related structures and works and appurtenances and the construction of any such hydroelectric generating facilities, the financing thereof pursuant to the provisions of this chapter, including provisions relating to the issuance of bonds or contracting indebtedness with a money-lending institution to pay the costs thereof by an irrigation district which is a party to a contract or agreement, the sale of surplus electric energy or the sale or use of rights to falling water in such manner as shall be necessary and desirable and in the best interests of the district, and the oper-

ation and maintenance of all or any part of such dam, canal or other irrigation district works so reconstructed, rehabilitated, replaced, modified and improved and of such hydroelectric generating facilities so constructed, which agreements or contracts may provide for the reconstruction, rehabilitation, replacement, modification or improvement of any such dam, canal or other irrigation district works and other related structures and works and appurtenances, the construction of hydroelectric generation facilities, the terms governing the disposition and sale of surplus electric energy or the sale or use of rights to falling water in relation to such dam, canal or other irrigation district works and generating facilities, which terms may include a provision requiring any purchaser of the surplus electric energy or falling water to purchase all the surplus energy generated or all the rights to or use of falling water associated with such dam, canal or other irrigation district works and hydroelectric generating facilities, the conditions under which the purchaser of the surplus electric energy or rights to use of falling water shall make payments to the district issuing the bonds, the rights and remedies of the parties thereto in the event of the failure of the purchaser of the surplus electric energy or rights to or use of falling water to make the required payments thereunder and the securing of all necessary permits and licenses required in connection therewith; the creation of a committee of representatives of the parties to the agreement or contract, which committee shall have such powers not inconsistent with the provisions of this chapter;

(d) To issue bonds of the district or to contract indebtedness with a money-lending institution in the manner provided in this chapter, or to consent to the issuance of such bonds or the contracting of indebtedness with a money-lending institution by another contracting irrigation district pursuant to the provisions of subsection (c) of this section, for the purpose of paying all or part of the cost of the reconstruction, rehabilitation, replacement, modification or improvement of any such dam, canal or other irrigation district works and other related structures and works and appurtenances and the construction of hydroelectric generating facilities as further described in subsections (a), (b) and (c) above, and for the purpose of paying all expenses preliminary and incidental thereto, including all engineering, fiscal and legal expenses and costs of issuance or contracting, printing, advertising, establishment of necessary reserves and payment of interest during construction;

(e) To provide that any bond issued and sold or any indebtedness contracted pursuant to the provisions of this chapter shall be payable ~~solely~~ out of a special fund into which the district issuing the bonds shall be obligated to deposit, as from time to time received, all or a designated portion of the proceeds from the sale of electric energy generated by hydroelectric generating facilities to be so constructed or from the sale or use of rights to falling water from the dam, canal or other irrigation district works to be so reconstructed, rehabilitated, replaced, modified or improved, all pursuant to contracts to be entered into as authorized in subsection (c) of this section; and

(f) In addition to the sources of payment for bonds or indebtedness set forth in subsection (e) of this section, the district may also:

(i) Pay such bonds or indebtedness from, or pledge for the payment of such bonds or indebtedness, any other assets, revenue or income of the district; or

(ii) Enter into agreements with financial, banking, insurance and other institutions for bond insurance, letters of credit, standby letters of credit, reimbursement agreements and remarketing, indexing and tender agent agreements to secure such bonds or indebtedness, including payment from any legally available source of fees, charges or other amounts coming due under such agreements entered into in connection with the issuance of the bonds or indebtedness.

(g) To enter into a trust indenture securing the bonds issued pursuant to the provisions hereof with a bank or trust company doing business either within or without the state of Idaho, and to assign the rights of the district to receive the payments provided for in subsection (e) of this section to such bank or trust company as trustee for and on behalf of the bondholders.

SECTION 2. That Section 43-2305, Idaho Code, be, and the same is hereby amended to read as follows:

43-2305. ELECTION ON CONTRACTS. Whenever the board of an irrigation district shall by resolution determine that the interest of said district and the public interest or necessity demand the reconstruction, rehabilitation, replacement, modification or improvement of any dam, canal or other irrigation district works and the construction of hydroelectric generating facilities, properties and related structures in connection and as an improvement to such dam, canal or other irrigation district works and the entering into of a contract as authorized in section 43-2301(c), Idaho Code, making provision therefor, said board shall be required to order the submission of the proposition of entering into a contract as provided in section 43-2301(c), Idaho Code, to the vote of the qualified electors of the district as defined in section 34-104, Idaho Code, at an election to be held for that purpose. The resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the contract is proposed to be entered into by the irrigation district; the estimated cost of the reconstruction, rehabilitation, replacement, modification or improvement of the dam, canal or other irrigation district works and/or construction of hydroelectric generating facilities as the case may be; the method of financing the reconstruction, rehabilitation, replacement, modification or improvement of the dam, canal or other irrigation district works and construction of hydroelectric generating facilities, including the maximum amount of bonds which may be issued or of indebtedness which may be contracted by a contracting irrigation district pursuant to such election and pursuant to the provisions of section 43-2301(d), Idaho Code.

Any election required to be held hereunder shall be called by resolution, which resolution shall also fix the date upon which such election shall be held, the manner of holding the same and the method of voting for or against the execution of the contract. Such resolution shall also fix the compensation to be paid the officers of the

election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three (3) judges, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. Description of precincts may be made by reference to any order or orders of the board of county commissioners of the county or counties in which the district or any part thereof is situated, or by reference to any previous order, or resolution of the board or by detailed description of such precincts. The resolution calling the election shall prescribe an official notice of election, which notice shall be published once a week for two (2) consecutive weeks, the last publication of which shall be at least ten (10) days prior to the date set for said election, in a newspaper of general circulation printed and published in the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made. The notice of election shall state that a copy or copies of the contract or contracts, in substantially the form contemplated to be entered into by the district are on file in the office of the secretary of the district for public inspection by any interested person during regular business hours.

The respective election boards shall conduct the election in their respective precincts in a manner prescribed by law for the holding of district elections to the extent the same shall apply and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five (5) days following the date of such election, the returns thereof shall be canvassed and the results thereof declared.

If it shall appear from said returns that a two-thirds (2/3) majority of the qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to enter into such contracts, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder or in the resolution therefor. Submission of the proposition of entering into such contract at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

Approved March 26, 1993.

CHAPTER 213
(H.B. No. 282)

AN ACT

RELATING TO COUNTY JAILS; AMENDING SECTION 20-602, IDAHO CODE, TO ALLOW CLASSIFICATION OF INMATES; REPEALING SECTION 20-603, IDAHO CODE; AMENDING SECTION 20-614, IDAHO CODE, TO REMOVE THE REQUIREMENT FOR THE COUNTY SHERIFF TO PAY FOR A PRISONER'S DEBTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-602, Idaho Code, be, and the same is hereby amended to read as follows:

20-602. SEPARATE ROOMS REQUIRED. (1) Each county jail ~~must--contain--a--sufficient--number-of-rooms-to-allow-all-persons-belonging-to either-one-of-the-following-classes-to-be-confined-separately-and-distinctly-from-persons-belonging-to-either-of-the-other-classes:~~

~~1.--Persons-committed-on-criminal-process-and-detained-for-trial.~~

~~2.--Persons-already-convicted-of-crime-and-held-under-sentence.~~

~~3.--Persons-detained-as-witnesses-or-held-under-civil-process,--or under-an-order-imposing-punishment-for-contempt.~~

~~4.--Males--separately--from--females~~ shall house male and female prisoners separately.

(2) Each county jail shall house separately all juveniles processed as adults under Idaho Code.

(3) Each county jail shall develop an objective inmate classification system which addresses the safety of all prisoners and the security of the facility. The classification system shall be documented through the Idaho sheriffs' association jail inspection program using the minimum standards for detention facilities.

SECTION 2. That Section 20-603, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 20-614, Idaho Code, be, and the same is hereby amended to read as follows:

20-614. PRISONERS MUST BE ACTUALLY CONFINED EXCEPT ON ORDER OF COURT FOR PRIVATE EMPLOYMENT. 1. A prisoner committed to the county jail by any court for trial or examination, or upon conviction for a public offense, must be confined in the jail until he is legally discharged unless the court specifies otherwise.

2. If the committed person has been regularly employed, the sheriff shall, if ordered by the committing judge, arrange for a continuation of said employment in so far as possible without interruption. Any prisoner so employed shall be paid a fair and reasonable wage for such work and shall work at fair and reasonable employment and hours per day and per week.

3. Whenever the prisoner is not employed, and between the hours or periods of his employment, he shall be confined in jail as an ordinary prisoner, unless the court shall direct otherwise.

4. ~~The-earnings-of-the-prisoner--shall--be--collected--under--the direction-of-the-sheriff.-From-such-earnings-the-sheriff-shall-pay-the prisoner's--board--and--personal--expenses-both-inside-and-outside-the jail,-and-to-the-extent-directed-by-the-court-pay-the-support--of--his dependents,--if-any,-and,-if-sufficient-funds-are-available-after-making-the-foregoing-payments,-pay-in-whole-or-in-part--the--pre-existing debts--of--the--prisoner.-Any-balance-shall-be-retained-until-his-discharge,-whereupon--such-balance-shall-be-paid-to-him.~~

~~5.~~ In case of any violation of the conditions laid down for his conduct, custody and employment the prisoner shall be returned to the court, and the court may then require the balance of his sentence be spent in actual confinement and may cancel any earned diminution of

his term.

65. The sheriff shall receive such extra compensation and mileage for the administration of this act as the county commissioners determine.

76. The court may also by its order authorize the use of a jail in a contiguous or other county where the prisoner is employed, and while the prisoner is so employed under this act such prisoner shall be in the other county's custody.

Approved March 26, 1993.

CHAPTER 214
(H.B. No. 300, As Amended)

AN ACT

RELATING TO EXEMPTIONS FROM THE PROPERTY TAX; AMENDING SECTION 63-105, IDAHO CODE, TO PROVIDE THAT ALL EXEMPTIONS FROM AD VALOREM PROPERTY TAXATION SHALL FIRST BE APPROVED ANNUALLY BY THE COUNTY BOARD OF EQUALIZATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-105, Idaho Code, be, and the same is hereby amended to read as follows:

63-105. PROPERTY EXEMPT FROM TAXATION. (1) Property shall be exempt from taxation as provided in this chapter; provided, that no deduction shall be made in assessment of shares of capital stock of any corporation or association for exemptions claimed under this section, and provided further, that the term full cash value wherever used in this act shall mean the actual assessed value of the property as to which an exemption is claimed. All exemptions from ad valorem taxation claimed under this chapter shall be approved annually by the county board of equalization.

(2) It shall be the duty of the county assessor to compile an inventory of real property exempt pursuant to sections 63-105A, 63-105B, 63-105C, 63-105I, 63-105K, 63-105L, 63-105M, 63-105N, 63-105O and 63-105T, Idaho Code. For real property the exemption of which is pursuant to sections 63-105A, 63-105M and 63-105O, Idaho Code, the assessor need provide only the titleholder, and the number of acres located in the county exempted pursuant to these sections. For exemptions granted pursuant to all other applicable sections, the assessor must provide the name of the record titleholder, the statutory exemption applicable to the property, whether the property is improved, and a brief legal description of the property. The assessor must submit the completed inventory to the board of county commissioners by September 30, 1992, together with a certification that such inventory contains a complete listing of all properties in the county qualifying for the applicable statutory exemptions on January 1, 1992. The board of county commissioners shall submit a copy of the inventory and certification to the state tax commission by November 10, 1992.

(3) Using inventories provided by county assessors, the state tax commission shall compile a statewide inventory showing the same information as provided by the county assessors and shall submit copies of the statewide inventory to the house revenue and taxation committee and the senate local government and taxation committee within fourteen (14) days of the commencement of the first regular legislative session in 1993.

Approved March 26, 1993.

CHAPTER 215
(H.B. No. 319)

AN ACT

RELATING TO PUBLIC HOUSING AUTHORITIES; AMENDING SECTION 50-1903, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 50-1904, IDAHO CODE, TO PROVIDE ADDITIONAL POWERS TO A HOUSING AUTHORITY AND TO CORRECT A SPELLING ERROR; AMENDING SECTION 50-1909, IDAHO CODE, TO AUTHORIZE CITIES OR COUNTIES TO LEND MONEYS TO HOUSING AUTHORITIES AND TO PROVIDE THAT WHEN A HOUSING AUTHORITY HAS THE MONEY AVAILABLE IT SHALL BE REIMBURSEMENT FOR ALL SUCH LOANS MADE TO IT; AMENDING SECTION 50-1916, IDAHO CODE, TO AUTHORIZE THE ISSUANCE OF BONDS FROM ALL OR PART OF AN AUTHORITY'S REVENUES OR ASSETS GENERALLY; AMENDING SECTION 50-1918, IDAHO CODE, TO AUTHORIZE AN AUTHORITY TO MORTGAGE ALL OR ANY PART OF ITS REAL OR PERSONAL PROPERTY THEN OWNED OR THEREAFTER ACQUIRED; AND AMENDING SECTION 50-1924, IDAHO CODE, TO DELETE LANGUAGE PROHIBITING A HOUSING AUTHORITY TO MORTGAGE OR OTHERWISE ENCUMBER PROPERTY OF ANY KIND; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-1903, Idaho Code, be, and the same is hereby amended to read as follows:

50-1903. DEFINITIONS. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "housing authority" shall mean any of the public corporations created by section ~~395~~ 59-1905, Idaho Code.

(b) "Housing project" shall mean any work or undertaking: (1) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (3) to accomplish a combination of the

foregoing. The term "Housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith; to buildings, and the land, equipment, facilities and other real or personal property, which do not contain dwelling units or other living accommodations for persons of low income when such buildings are utilized for administrative, community, health, recreational, welfare or other purposes by or for low income persons or senior citizens, and redevelopment projects carried out by an authority at the request of local government when such projects include dwelling units which are sold or rented to persons of low income.

(c) "Governing body" shall mean the city council, board of commissioners, board of trustees or other body having charge of the fiscal affairs of the state public body.

(d) "Federal government" shall include the United States of America, the United States ~~housing authority~~ department of housing and urban development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "City" shall mean any city in the state of Idaho, including each city having a special charter. "The city" shall include those having a special charter and shall mean the particular city for which a particular housing authority is created.

(f) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(g) "Area of operation" shall include the city and the area within five (5) miles of the territorial boundaries thereof; provided, however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined.

(h) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(i) "Person of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding.

(j) "Bonds" shall mean any bonds, notes, interim certificates, debentures or other obligations issued by an authority pursuant to this chapter.

(k) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(l) "Obligee of the authority" or "Obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessors demising, to the authority, property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any

part thereof, and the federal government when it is a party to any contract with the authority.

SECTION 2. That Section 50-1904, Idaho Code, be, and the same is hereby amended to read as follows:

50-1904. POWERS OF AUTHORITY. A housing authority shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal ~~by-laws~~ bylaws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the authority.

(b) Within the area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this act or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this act, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein; to acquire, by the exercise of the power of eminent domain, any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance; to rent or sell and to agree to rent or sell dwellings forming part of the housing projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the

conveyance a person of low income. Leases, options, agreements or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which banks may legally invest funds, subject to the control of the housing authority; to purchase its own bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be canceled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof, under oath, at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring attendance of witnesses or the production of books and papers, and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available, to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation), its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(i) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing or refinancing of land, buildings or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(j) Any housing project shall be subject to the requirement that the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least thirty percent (30%) of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent (50%) of the total number of units in the development or at least fifty percent (50%) of the total number of units in the

development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent (50%) of the total number of mobile home lots in the park.

(k) To exercise all or any part ~~of~~ or combination of powers herein granted.

SECTION 3. That Section 50-1909, Idaho Code, be, and the same is hereby amended to read as follows:

50-1909. DONATIONS TO HOUSING AUTHORITY. Any city or county, in which a housing authority has been created, shall have the power, from time to time, to lend or donate money to such authority or to agree to take such action; provided, however, that ~~nothing contained in this provision or in any other provision of law shall be construed as authorizing the state or any state public body to give credit or make loans to a housing authority~~ when a housing authority has the money available therefore it shall make reimbursement for all such loans made of it.

SECTION 4. That Section 50-1916, Idaho Code, be, and the same is hereby amended to read as follows:

50-1916. BONDS. An authority shall have power to issue bonds, from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. In order to carry out the purposes of sections 50-1901 through 50-1927, Idaho Code, an authority may issue, upon proper resolution, bonds on which the principal and interest are payable: (a) exclusively from the income and revenue of a housing project financed with the proceeds of such bonds, or (b) exclusively from such income and revenues together with grants and contributions from the federal government or other source in aid of such project, or (c) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made and recorded; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective or whether the parties have notice thereof.

Neither the commissioners of any authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority shall state on their face that they shall not be a debt of the city, the county, the state nor any political subdivision thereof and neither the city, the county, the state nor any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of said

authority. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

SECTION 5. That Section 50-1918, Idaho Code, be, and the same is hereby amended to read as follows:

50-1918. PROVISIONS OF BONDS AND TRUST INDENTURES. In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(~~c~~d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost[,] destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for the redemption and to provide the terms and conditions thereof.

(~~d~~e) To covenant, subject to the limitations contained in this act, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(~~e~~f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(~~f~~g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(~~g~~h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and to the terms and conditions upon which such declaration and its consequences may be waived.

(~~h~~i) To vest, in a trustee or trustees or the holders of bonds or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession of any housing project or part thereof, and, so long as said authority shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee, to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(~~i~~j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

SECTION 6. That Section 50-1924, Idaho Code, be, and the same is hereby amended to read as follows:

50-1924. CONSTRUCTION OF POWERS CONFERRED. Nothing in this act or any other law shall be construed as authorizing a housing authority to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the city, the county, the state or any subdivision thereof~~; nor shall any provision of this act or other law be construed as authorizing a housing authority to mortgage or otherwise encumber property of any kind, real, personal, or mixed, or any interest therein, but this section shall not be construed as preventing the pledge of the revenues of a housing authority as authorized in this act.~~

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 216
(H.B. No. 331)

AN ACT

RELATING TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 12-117, 22-1104, 22-1213, 22-3114, 22-3813, 23-1015, 23-1016, 25-225A, 25-613A, 25-614A, 26-1809, 26-2249, 26-2805, 30-1447, 30-1518, 33-1209 AND 36-104, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTION

36-2114, IDAHO CODE, AS AMENDED BY CHAPTER 254, LAWS OF 1990, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTIONS 36-2115, 38-210, 38-1222, 38-1306, 39-107, 39-605, 39-2002, 39-4120, 39-4404, 39-4909, 39-5814, 41-242, 41-1435, 42-203D, 42-238, 42-1605, 42-1607, 42-1701A, 42-1734D, 42-1737, 42-3805, 42-4005, 42-4012, 47-324, 47-718, 47-1318, 47-1320, 47-1505, 47-1513, 49-436, 49-1621, 54-305, 54-521, 54-530, 54-608, 54-610, 54-611, 54-707, 54-817, 54-835, 54-912, 54-1009 AND 54-1117, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; REPEALING SECTION 54-1126, IDAHO CODE; AMENDING SECTIONS 54-1220 AND 54-1510, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; REPEALING SECTION 54-1511, IDAHO CODE; AMENDING SECTIONS 54-1513, 54-1518, 54-1612, 54-1614 AND 54-1726, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; REPEALING SECTION 54-1727, IDAHO CODE; AMENDING SECTIONS 54-1915, 54-1916, 54-2042, 54-2114, 54-2115, 54-2214 AND 54-2215, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; REPEALING SECTION 54-2216, IDAHO CODE; AMENDING SECTIONS 54-2305, 54-2412, 54-2413, 54-2608, 54-2819, 54-2820, 54-2912, 54-3004, 54-3114, 54-3314, 54-3321, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTION 54-3905, IDAHO CODE, AS ADDED BY CHAPTER 138, LAWS OF 1989, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTIONS 54-4213, 54-4215 AND 56-133, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTION 58-405, IDAHO CODE, TO PROVIDE THAT DECISIONS BY THE STATE BOARD OF LAND COMMISSIONERS TO DISPOSE OF TIMBER SHALL NOT RECEIVE JUDICIAL REVIEW PURSUANT TO CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTIONS 59-1314 AND 67-454, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTION 67-802, IDAHO CODE, TO REQUIRE PUBLICATION OF EXECUTIVE ORDERS IN THE ADMINISTRATIVE BULLETIN; AMENDING SECTION 67-904, IDAHO CODE, TO DELETE A REQUIREMENT TO PUBLISH EXECUTIVE ORDERS IN THE SESSION LAWS; AMENDING SECTION 67-2761, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE; AMENDING SECTIONS 67-5201, 67-5203 AND 67-5204, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PROVIDE THAT JUDICIAL NOTICE BE TAKEN OF THE OFFICIAL TEXT OF ADMINISTRATIVE RULES; AMENDING SECTION 67-5206, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PRESCRIBE RULE MAKING REQUIREMENTS FOR THE ATTORNEY GENERAL; AMENDING SECTION 67-5221, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PROVIDE CORRECT NOMENCLATURE; AMENDING SECTION 67-5227, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PROVIDE CONDITIONS WHEN A FINAL RULE MAY VARY FROM A PROPOSED RULE; AMENDING SECTION 67-5241, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PROVIDE AN EXCEPTION TO INFORMAL DISPOSITION OF CONTESTED CASES; AMENDING SECTION 67-5250, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PROVIDE FOR INDEXING OF AGENCY GUIDANCE DOCUMENTS; AMENDING SECTION 67-5252, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO PROVIDE FOR DISQUALIFICATION OF A PRESIDING OFFICER; AMENDING SECTION 67-5273, IDAHO CODE, AS AMENDED BY CHAPTER 263, LAWS OF 1992, TO

ALLOW A CROSS-PETITION FOR JUDICIAL REVIEW; AND AMENDING SECTIONS 67-6519, 67-6520 AND 67-6521, IDAHO CODE, TO CONFORM WITH THE REQUIREMENTS OF CHAPTER 52, TITLE 67, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 12-117, Idaho Code, be, and the same is hereby amended to read as follows:

12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES. (1) In any administrative or civil judicial proceeding involving as adverse parties a state agency and a person, the court shall award the person reasonable attorney's fees, witness fees and reasonable expenses, if the court finds in favor of the person and also finds that the state agency acted without a reasonable basis in fact or law.

(2) If the person is awarded a partial judgment and the court finds the state agency acted without a reasonable basis in fact or law, the court shall allow the person attorney's fees, witness fees and expenses in an amount which reflects the person's partial recovery.

(3) Expenses awarded under this ~~act~~ <u>section</u> shall be paid from funds in the regular operating budget of the state agency. If sufficient funds are not available in the budget of the agency, the expenses shall be considered a claim governed by the provisions of section 67-2018, Idaho Code. Every state agency against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

(4) For the purposes of this section:

(a) "Person" shall mean any individual, partnership, corporation, association or any other private organization;

(b) "State agency" shall mean any agency as defined in section 67-5201~~(1)~~, Idaho Code.

(5) If the amount pleaded in an action by a person is twenty-five hundred dollars ($2,500) or less, the person must satisfy the requirements of section 12-120, Idaho Code, as well as the requirements of this section before he or she may recover attorney's fees, witness fees or expenses pursuant to this section.

SECTION 2. That Section 22-1104, Idaho Code, be, and the same is hereby amended to read as follows:

22-1104. VIOLATION OF RULES -- CIVIL PENALTY. Any person violating a rule ~~or regulation~~ promulgated by the director to implement provisions of this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars ($3,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure

act, chapter 52, title 67, Idaho Code. If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within ~~thirty (30)~~ twenty-eight (28) days of the final agency action making the assessment, ~~appeal~~ seek judicial review of the assessment ~~to the district court of the county in which the violation is alleged by the department to have occurred~~ in accordance with the provisions of chapter 52, title 67, Idaho Code.

Moneys collected for violation of a rule or regulation shall be deposited in the state treasury and credited to the organic food products administration account of the department.

SECTION 3. That Section 22-1213, Idaho Code, be, and the same is hereby amended to read as follows:

22-1213. PENALTY FOR VIOLATIONS. Any person who shall violate or aid in the violation of any of the provisions of this chapter, any rules ~~and regulations~~ promulgated pursuant thereto, or the terms of any licensing agreement may be assessed a civil penalty by the commission or its duly authorized agent of not more than one thousand dollars ($1,000) for each offense and a civil penalty of not more than one thousand dollars ($1,000) for each day of continuing violation of such statute~~,~~ or rule ~~or regulation~~ or licensing agreement. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code. If the commission or its agent is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commission or its agent, it may enforce its penalty by action in the appropriate district court. Any person against whom the commission or its agent has assessed a civil penalty pursuant to this section may, within ~~thirty (30)~~ twenty-eight (28) days of the final agency action making the assessment, appeal the assessment in accordance with ~~section 67-5215~~ chapter 52, title 67, Idaho Code. All fines collected pursuant to this section shall be paid into the Idaho advertising and development fund. Nothing contained in this section shall be deemed to preclude the commission from pursuing any other civil or criminal remedies available to it as provided by law.

SECTION 4. That Section 22-3114, Idaho Code, be, and the same is hereby amended to read as follows:

22-3114. DEALER'S LICENSE REQUIRED -- APPLICATION -- FEES -- SURETY BOND -- REVOCATION OF LICENSE -- FORFEITURE OF BOND. No person shall act as dealer in hops without having obtained a license as provided in this act. Every person acting as a dealer shall file a written application with the commission for a license as such which application shall state the applicant's name, principal business addresses within and without the state of Idaho, the name of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant within the state of Idaho and such other

information as the commission may require. Each application shall be accompanied with a license fee of fifty dollars ($50.00) and by a good and sufficient surety bond in the penal sum of two thousand dollars ($2,000) executed by the applicant as principal and by a surety company authorized to do business in the state of Idaho as surety and conditioned upon the applicant's full and complete compliance with the provisions of this act and all of the rules~~, regulations~~ and orders of the commission. The commission shall investigate each applicant thoroughly and if the commission is satisfied that the applicant is of good character and reputation and is financially responsible, a license shall be issued for the period ending on the next succeeding first Monday of January, otherwise the application shall be denied. The commission may revoke a license after thirty (30) days' written notice of its intention so to do, and after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, if the licensee shall wilfully fail to fully and completely comply with the provisions of this act and all of the rules~~, regulations~~ and orders of the commission. Upon the revocation of such license the full amount of the bond shall be forfeited and damages in that sum shall be conclusively presumed to have been incurred by the commission. All license fees and all bond forfeitures shall be deposited as provided in section 22-3112, Idaho Code. Any person aggrieved by the final action of the commission is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 5. That Section 22-3813, Idaho Code, be, and the same is hereby amended to read as follows:

22-3813. LICENSE APPLICATION -- FEE -- BOND -- REVOCATION -- FORFEITURE. No person shall act as dealer in the essential oils without having obtained a license as provided in this act. Every person acting as a dealer shall file a written application with the commission for a license as such which application shall state the applicant's name, principal business addresses within and without the state of Idaho, the name of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant within the state of Idaho and such other information as the commission may require. Each application shall be accompanied with a license fee of fifty dollars ($50.00) and by good and sufficient surety bond in the penal sum of two thousand dollars ($2,000~~.00~~) executed by the applicant and as principal and by a surety company authorized to do business in the state of Idaho as surety and conditioned upon the applicant's full and complete compliance with the provisions of this act and all of the rules~~, regulations~~ and orders of the commission. The commission shall investigate each applicant thoroughly and if the commission is satisfied that the applicant is of good character and reputation and is financially responsible, a license shall be issued for the period ending on the next succeeding first Monday of January, otherwise the application shall be denied. The commission may revoke a license after thirty (30) days' written notice of its intention so to do, and after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52,

title 67, Idaho Code, if the licensee shall willfully fail to fully and completely comply with the provisions of this act and all of the rules~~,--regulations~~ and orders of the commission. Upon the revocation of such licenses the full amount of the bond shall be forfeited and damages in that sum shall be conclusively presumed to have been incurred by the commission. All license fees and all bond forfeitures shall be deposited as provided in section 22-3811 ~~of this act~~, Idaho Code. Any person aggrieved by the final action of the commission is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 6. That Section 23-1015, Idaho Code, be, and the same is hereby amended to read as follows:

23-1015. COUNTY RETAILERS' LICENSE, WHEN REQUIRED, PROCEDURE. (1) It shall be unlawful for any retailer to sell beer without first procuring a retailer's license from the county, said license to be issued on such conditions and terms as may be required by the board of county commissioners in the county wherein such place of sale of beer is located; provided, that no county shall exact a license fee from any dealer except as follows:

(a) Where such retailer sells only bottled or canned beer: none of which is consumed on the premises where sold, the license fee shall be equal to twenty-five per cent (25%) of the license fee exacted under subsection (1)(b) ~~hereof~~ of this section relating to draught beer and bottled or canned beer, or draught beer only; and where such bottled or canned beer is consumed on the premises where sold the license fee shall be seventy-five per cent (75%) of the fee exacted under said subsection (b) hereof.

(b) Where such retailer sells draught beer and bottled or canned beer, or draught beer only, not in excess of one hundred dollars ($100), a year.

(2) The board of county commissioners shall establish a procedure for processing applications for licenses, transfers or renewals thereof in a timely manner. Each application for a license, transfer or renewal thereof, required by the provisions of this section, shall be submitted to the board of county commissioners for a decision. The board of county commissioners shall have a reasonable time to examine the application before a decision is made on granting or denying the license, or the transfer or renewal thereof. Each board of county commissioners shall establish, by ordinance, a time period within which a decision must be made following submission of an application. Whenever a board of county commissioners denies an application, the board shall specify in writing:

(a) The statutes, ordinances and standards used in evaluating the application;

(b) The reasons for denial; and

(c) The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

(3) An applicant denied a license, transfer or renewal thereof or aggrieved by a decision of the board of county commissioners pursuant to this section may, within ~~sixty (60)~~ twenty-eight (28) days, after all remedies have been exhausted under county ordinances or proce-

dures, seek judicial review under the procedures provided in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code~~. For the~~, and for such purposes ~~of sections 67-5215 and 67-5216, Idaho Code, and of this section,~~ a county shall be construed to mean an agency.

(4) In all cases where the board of county commissioners is considering applications for licenses, transfers or renewals thereof, a transcribable verbatim record of the proceedings shall be made. If the application for a license, transfer or renewal is denied, a transcribable, verbatim record of the proceedings shall be kept for a period of not less than six (6) months after a final decision on the matter. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The board of county commissioners shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

SECTION 7. That Section 23-1016, Idaho Code, be, and the same is hereby amended to read as follows:

23-1016. MUNICIPAL LICENSE ALSO REQUIRED -- PROCEDURE. (1) It shall be competent and lawful for an incorporated municipality within the county wherein said county license to sell beer is granted by the county, by proper ordinance and regulation, to prohibit the sale of beer within the incorporated limits of such incorporated municipality until a retailer's license is first obtained from such incorporated municipality. Provided, however, that no incorporated municipality shall issue a license to any retailer until such retailer shall have first obtained a county license from the board of county commissioners, and that a revocation of the license granted by the board of county commissioners shall work a revocation of license granted by such incorporated municipality. Provided, further, that no municipality, whether operating under a special charter or otherwise, shall exact a license fee from any retailer except as follows:

(a) Where such retailer sells only bottled or canned beer: none of which is consumed on the premises where sold, the license fee shall be equal to twenty-five per cent (25%) of the license fee exacted under subsection (1)(b) of this section.

(b) Where such retailer sells for consumption on the premises, draught beer and bottled or canned beer or draught beer only, not in excess of two hundred dollars ($200) a year.

(2) The city council shall establish by ordinance a procedure for processing applications for licenses, transfers or renewals thereof in a timely manner. Each application for a license, transfer or renewal thereof, required by the provisions of this section, shall be submitted to the city council for a decision. The city council shall have a reasonable time to examine the application before a decision is made on granting or denying the license, or the transfer or renewal thereof. Each city council shall establish, by ordinance, a time period within which a decision must be made following submission of an application. Whenever a city council denies an application, the council shall specify in writing:

(a) The statutes, ordinances and standards used in evaluating the application;

(b) The reasons for denial; and

(c) The actions, if any, that the applicant could take to obtain the license, transfer or renewal thereof.

(3) Nothing in this section shall be construed as prohibiting the delegation of the processing of an application and the granting or denying thereof, as provided in subsection (2) of this section, to a municipality's city clerk. If the licensing power is delegated, an applicant denied a license, transfer, or renewal thereof may appeal the city clerk's decision to the city council, within the time and in the manner as the city council may provide by ordinance.

(4) An applicant denied a license, transfer or renewal thereof or aggrieved by a decision of the city council pursuant to this section may, within ~~sixty (60)~~ twenty-eight (28) days, after all remedies have been exhausted under city ordinances and procedures, seek judicial review under the procedures provided in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code~~. For the~~, and for such purposes ~~of sections 67-5215 and 67-5216, Idaho Code, and of this section,~~ a city shall be construed to mean an agency.

(5) In all cases where the city council is considering an application for or hearing an appeal from a denial of a license, transfer or renewal thereof, a transcribable verbatim record of the proceedings shall be made. If the application for or appeal from a denial of a license, transfer or renewal is denied, a transcribable, verbatim record of the proceedings shall be kept for a period of not less than six (6) months after a final decision on the matter. For the purpose of this section, the date of final decision shall be the date upon which the written decision of the city council is transmitted. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense. The city council shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

SECTION 8. That Section 25-225A, Idaho Code, be, and the same is hereby amended to read as follows:

25-225A. SWINE -- PSEUDORABIES -- HERD DEPOPULATION. In order to prevent the introduction or dissemination of pseudorabies into or among the swine population of Idaho, the division of animal industries is granted authority to condemn pseudorabies infected herds and to require the destruction of such herds. The board of examiners is authorized and empowered upon the recommendation of the division to reimburse the owner by cash payment for pseudorabies affected or exposed animals which have been appraised and slaughtered or condemned by the direction of the division, provided that the state shall only pay the difference between appraised price less federal indemnity and salvage for any livestock slaughtered or condemned under this section. In the event federal indemnity is unavailable, the state shall only pay the difference between appraised price and salvage. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in swine marketing. However, the director or his designee may grant a hearing to any person under such rules ~~and regulations~~ as the department may prescribe which

are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the director or his designee under the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 9. That Section 25-613A, Idaho Code, be, and the same is hereby amended to read as follows:

25-613A. CALFHOOD VACCINATION AGAINST BRUCELLOSIS REQUIRED -- PENALTY. All female cattle born after July 1, 1983, shall be officially calfhood vaccinated. "Officially calfhood vaccinated" shall mean a bovine female animal vaccinated against Brucellosis under the supervision of a federal or state veterinary official with age limits prescribed by the department in compliance with United States department of agriculture recommended uniform methods and rules, with a vaccine approved by the department, and permanently identified as such a vaccinate and reported at the time of vaccination to the department or appropriate federal agency cooperating in the eradication of Brucellosis. However, the director of the department or his designee may grant a hearing to any persons, under such rules ~~and regulations~~ as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, as to whether an exception should be made to the provisions of this section. An appeal may be taken from the decision of the director or his designee under the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code. Any person who shall possess or own in this state or acquire within this state any cattle contrary to the provisions of this section shall be guilty of a misdemeanor and shall be punished according to the provisions of section 25-616, Idaho Code. The department also may order that when animals are found not to be in compliance with the provisions of chapter 2, title 25, Idaho Code, and chapter 6, title 25, Idaho Code, that they be slaughtered, removed from the state, or placed in an Idaho registered quarantine feed lot.

SECTION 10. That Section 25-614A, Idaho Code, be, and the same is hereby amended to read as follows:

25-614A. HERD DEPOPULATION. In order to facilitate the advancement of the state of Idaho to Brucellosis class free and to maintain the state in this category, the division of animal industries is granted authority to condemn Brucellosis infected herds and to require the destruction of such infected herds. The board of examiners is authorized and empowered upon the recommendation of the division, to reimburse the owner by cash payment for Brucellosis affected or exposed animals which have been appraised and slaughtered by direction of the division, provided that the state shall only pay the difference between appraised price less federal indemnity and salvage for any livestock slaughtered under this section. Appraisals shall be performed by a team made up of an animal health representative, the owner and a person with experience in cattle marketing. However, the director or his designee may grant a hearing to any person under such rules ~~and regulations~~ as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when appraisal price is in

dispute. An appeal may be taken from the decision of the director or his designee under the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 11. That Section 26-1809, Idaho Code, be, and the same is hereby amended to read as follows:

26-1809. APPROVAL OR REJECTION -- APPEAL. The director, within a reasonable time after the hearing, but not later than four (4) months thereafter, shall either approve or disapprove such application and shall indorse upon each copy of the proposed articles of incorporation and bylaws the word "approved" or "rejected" and the date thereof. If the director shall reject said application, he shall forthwith return one (1) copy of the proposed articles of incorporation and bylaws to the applicant. Any person aggrieved by a final order of the director may obtain judicial review of that decision pursuant to the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 12. That Section 26-2249, Idaho Code, be, and the same is hereby amended to read as follows:

26-2249. JUDICIAL REVIEW OF FINAL ORDERS OF DIRECTOR. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 13. That Section 26-2805, Idaho Code, be, and the same is hereby amended to read as follows:

26-2805. POWERS AND DUTIES OF DIRECTOR. (1) In addition to the other duties imposed upon the director by law, the director shall:

(a) Conduct investigations and issue subpoenas as necessary to determine whether any person has violated any provision of this chapter or rules promulgated under authority of this chapter.

(b) Conduct examinations of the books and records of mortgage companies and investigations as necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter.

(2) The director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter. Any rules promulgated shall be promulgated in accordance with chapter 52, title 67, Idaho Code. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to ~~section--67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 14. That Section 30-1447, Idaho Code, be, and the same is hereby amended to read as follows:

30-1447. JUDICIAL REVIEW OF ORDERS. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 15. That Section 30-1518, Idaho Code, be, and the same is hereby amended to read as follows:

30-1518. JUDICIAL REVIEW OF ORDERS. Any person aggrieved by a final order of the director may obtain judicial review of the order pursuant to the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 16. That Section 33-1209, Idaho Code, be, and the same is hereby amended to read as follows:

33-1209. PROCEEDINGS TO REVOKE, SUSPEND OR DENY -- LETTERS OF REPRIMAND -- COMPLAINT -- SUBPOENA POWER -- HEARING. (1) The professional standards commission may conduct investigations on any signed allegation of unethical practice of any teacher brought by:

(a) An individual with a substantial interest in the matter, except a student in an Idaho public school; or

(b) A local board of trustees.

The allegation shall state the specific ground or grounds for revocation, suspension or issuance of a letter of reprimand. The executive committee of the professional standards commission shall review the circumstances of the case and determine whether probable cause exists to warrant the filing of a complaint and the requesting of a hearing.

(2) If the executive committee determines there are not sufficient grounds for revocation or suspension, the committee may recommend to the chief certification officer that a letter of reprimand be sent to the certificate holder, and that a copy of such letter shall be made a permanent part of the record of the certificate holder.

(3) Proceedings to revoke or suspend any certificate issued under section 33-1201, Idaho Code, or to issue a letter of reprimand shall be commenced by a written complaint against the holder thereof. Such complaint shall be made by the chief certification officer stating the ground or grounds for issuing a letter of reprimand or for revocation or suspension and proposing that a letter of reprimand be issued, or the certificate be revoked or suspended. A copy of the complaint shall be served upon the certificate holder, either by personal service or by certified mail.

(4) Not more than thirty (30) days after the date of service of any complaint, the person complained against may request, in writing, a hearing upon the complaint. Any such request shall be made and addressed to the state superintendent of public instruction; and if no request for hearing is made, the grounds for suspension or revocation stated in the complaint shall be deemed admitted. Upon a request for hearing, the chief certification officer, shall give notice, in writing, to the person requesting the hearing, which notice shall state the time and place of the hearing. The time of such hearing shall not be less than five (5) days from the date of notice thereof. Any such hearing shall be informal and shall conform with ~~the administrative procedure act, section 67-5201 et seq.~~ chapter 52, title 67, Idaho Code. The hearing will be held within the school district in which any teacher complained of shall teach, or at such other place deemed most convenient for all parties.

(5) Any such hearing shall be conducted by three (3) or more

panel members appointed by the chairman of the professional standards commission, a majority of whom shall hold a position of employment the same as the person complained against. No commission member who participated in the probable cause determination process in a given case shall serve on the hearing panel. All hearings shall be held with the object of ascertaining the truth. Any person complained against may appear in person and may be represented by legal counsel, and may produce, examine and cross-examine witnesses, and, if he chooses to do so, may submit for the consideration of the hearing panel a statement, in writing, in lieu of oral testimony, but any such statement shall be under oath and the affiant shall be subject to cross-examination.

(6) The state superintendent of public instruction, as authorized by the state board of education, has the power to issue subpoenas and compel the attendance of witnesses and compel the production of pertinent papers, books, documents, records, accounts and testimony. The state board or its authorized representative may, if a witness refuses to attend or testify or to produce any papers required by such subpoena, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that a due notice has been given of the time and place of attendance of the witnesses, or the production of the papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or its representative, or has refused to answer questions propounded to him in the course of the proceedings, and ask for an order of the court compelling the witness to attend and testify and produce the papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in the order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced the papers before the board or its representative. A copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the board and regularly served, the court shall there upon order that the witness appear before the board at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the witness shall be dealt with for contempt of court. The subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(7) At the conclusion of any hearing dealing with the revocation, suspension, denial of a certificate or to issue a letter of reprimand, the hearing panel shall submit to the chief certification officer, a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and recommendation. The hearing panel may recommend suspension or revocation of the certificate, or the panel may recommend that a letter of reprimand be sent to the certificate holder, and that a copy of such letter shall be made a permanent part of the record of the certificate holder. The chief certification officer shall submit these documents to the state board of education. The board shall review the record so made, as well as its own records before making its determination. The board may adopt the panel's recommended decision, reverse

or alter the decision, or it may order another hearing before the same or other persons, or before the board.

(8) The determination of the state board of education, upon any hearing, shall be entered in its records, and written notice of its determination shall be given to the person complained against by the state superintendent of public instruction, which notice shall be a part of the records of the state board of education.

(9) ~~Pursuant to section 67-5215, Idaho Code, t~~The final determination of the state board of education ~~may be reviewed by writ of~~ shall be subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code, in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher~~, but application for writ of review shall be made not more than thirty (30) days from the date of notice of revocation~~.

(10) Whenever any certificate has been refused or revoked, the state board of education may, upon a clear showing that the cause constituting grounds for refusal or revocation no longer exists, issue a certificate or reinstate a revoked certificate either conditionally or unconditionally.

SECTION 17. That Section 36-104, Idaho Code, be, and the same is hereby amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization -- Meetings. The members of the commission shall annually meet at their offices in the city of Boise and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings in April, July and October of each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection

thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make ~~an order~~ a rule embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of any act of God or any other sudden or unexpected emergency, declare by ~~written order~~ temporary rule the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such ~~emergency order~~ temporary rule shall be made in accordance with the provisions of ~~section 67-5203~~ chapter 52, title 67, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5. (A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules ~~and regulations~~ as it shall prescribe.

(B) The commission may, under rules ~~and regulations~~ as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing owners, lessees in control of land valuable for habitat or propagation purposes of deer, elk or antelope, or members of their immediate families, to hunt deer, elk or antelope in controlled hunt units containing the eligible land owned or controlled by those individuals in areas where permits for deer, elk or antelope are limited.

(C) There shall be no fee charged to any individual for submitting an application to participate in a controlled hunt; provided, however, a permit fee of not to exceed three dollars ($3.00) for deer, ten dollars ($10.00) for moose, sheep and goat and five dollars ($5.00) for elk, antelope and such other species as may be determined in the future, shall be charged for the privilege of participating in a controlled hunt. All procedures under this section shall be under the control and in the discretion of the director of the department of fish and game. No person shall transfer any such permit to any other person nor shall any person ~~to~~ make use of such permit issued to any other person.

6. Adopt rules ~~and regulations~~ pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or

waters suitable for the purposes hereinafter enumerated in this paragraph. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

(A) For fish hatcheries, nursery ponds, or game animal or game bird farms;

(B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;

(C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;

(D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.

8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.

9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.

10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range manage-

ment operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules ~~and--regulations~~ to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules ~~and--regulations~~ pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules ~~and-regulations~~ governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

SECTION 18. That Section 36-2114, Idaho Code, as amended by Chapter 254, Laws of 1990, be, and the same is hereby amended to read as follows:

36-2114. REVOCATION OR SUSPENSION OF LICENSE -- REVIEW OF DENIAL OF LICENSE -- PROCEDURE. (a) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon information and recommendation of any person. All accusations must be made in writing and signed by a person familiar therewith and submitted to the board. Thereupon, the board, acting as a board, or through its executive director, shall make a preliminary investigation of all facts in connection with such charge. The board in its discretion may either decide to take no further action and the results of such investigation shall be subject to disclosure according to chapter 3, title 9, Idaho Code, or the board may decide to initiate proceedings to suspend or revoke the license of the outfitter or guide against whom a complaint has been filed, in which case the board shall set a time and place for hearing as provided in ~~section-67-5209~~ chapter 52, title 67, Idaho Code. Notice of such hearing shall be given to the licensee against whom accusations have been filed not later than one hundred eighty (180) days after the filing of such accusations. If, after full, fair and impartial hearing, the majority of the board shall find the accused has committed the violations alleged, the board may suspend the license for a period not to exceed one (1) year, or the board may order the license revoked. The board shall forthwith suspend or revoke

such license in accordance with and pursuant to its order under the procedure established ~~by sections 67-5209 through 67-5214~~ in chapter 52, title 67, Idaho Code.

(b) Any applicant aggrieved by a denial of his application in whole or in part for an outfitter's or guide's license by the board shall have twenty-one (20~~1~~) days from the day of receiving such notice of denial in which to submit a written request for a hearing before the board to review such action. Upon receipt of such request, the board shall hold a hearing as provided in ~~sections 67-5209 through 67-5214~~ chapter 52, title 67, Idaho Code.

SECTION 19. That Section 36-2115, Idaho Code, be, and the same is hereby amended to read as follows:

36-2115. REVIEW OF BOARD ACTION. Any person aggrieved by any action of the board in denying the issuance of or in the suspension or revocation of an outfitter's or guide's license may proceed as provided in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 20. That Section 38-210, Idaho Code, be, and the same is hereby amended to read as follows:

38-210. GRAZING AND OTHER USE. After lands have been designated as "reforestation lands," the owner thereof shall have no right to permit grazing thereon or use said lands for any other purpose except under rules ~~and regulations~~ adopted by the state board of land commissioners in accordance with the provisions of chapter 52, title 67, Idaho Code, and then only at such times and to such extent as shall be prescribed by such rules ~~and regulations~~. Such rules ~~and regulations~~ shall be published in book or pamphlet form and shall be mailed to each owner of such lands as his name appears on the records in the office of the director of the department of lands and the mailing of such rules ~~and regulations~~ by the board to such owner at his last known post-office address shall be sufficient notice to such owner of such rules ~~and regulations~~ and the same shall be in full force and effect as to such owner thirty (30) days after the mailing thereof. The director shall keep an accurate record of the name and address of each owner to whom such rules ~~and regulations~~ have been mailed together with the date of mailing.

SECTION 21. That Section 38-1222, Idaho Code, be, and the same is hereby amended to read as follows:

38-1222. APPEAL FROM CHECKSCALE TO BOARD -- APPEAL FROM BOARD TO COURT. Any scaler, seller, user, producer, buyer, or hauler of forest products aggrieved by any checkscaling report may appeal the report to the board. The board shall hear and determine such appeal as a contested case as provided in chapter 52, title 67, Idaho Code.

Any person aggrieved by any action of the board in denying, suspending, or revoking his license may appeal therefrom to the district court as provided in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 22. That Section 38-1306, Idaho Code, be, and the same is hereby amended to read as follows:

38-1306. NOTIFICATION OF FOREST PRACTICE. (1) Before commencing a forest practice, the department shall be notified as required ~~by~~ in subsection (2) of this section. The notice shall be given by the operator; however, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one (1) forest practice is to be conducted in relation to harvesting of forest tree species, one (1) notice including each forest practice to be conducted shall be filed with the department. A woodland management plan prepared by the woodland foresters of the department or approved by the board of supervisors of a soil conservation district shall constitute suitable notification of a forest practice when filed with the department, provided the woodland management plan contains the information required ~~by~~ in subsection (2) of this section.

(2) The notification required ~~by~~ in subsection (1) of this section shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner, the legal description of the area in which the forest practice is to be conducted, whether the forest practice borders a stream segment of concern and other information the department considers necessary for the administration of the rules adopted by the board under section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. If the forest practice will be conducted in an area bordering a stream segment of concern, this notice must be received by the department no less than ten (10) business days before the commencement of the forest practice. If there is no written agreement between the landowner and/or the operator and the department concerning implementation of site specific BMPs which the department has determined are necessary to protect water quality in the affected stream segment of concern, the department shall not accept the notification until ~~emergency~~ temporary rules have been enacted establishing the site-specific BMPs. The director shall have the authority to adopt ~~emergency~~ temporary rules pursuant to ~~section 67-5203(b)~~ chapter 52, title 67, Idaho Code. The initial purchaser of ties, logs, posts, cordwood, pulpwood and other similar forest products which have been cut from lands within the state of Idaho shall make no such purchase from anyone not having a proper acceptance of forest practice notice. Promptly upon formal acceptance of the notice, but not more than fifteen (15) days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, the timber owner, and landowner a copy of the rules.

(3) An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notification within thirty (30) days of the change. Promptly upon receipt of notice of change, but not to exceed fifteen (15) days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of

change.

(4) The notification is valid for the same period as set forth in the certificate of compliance under section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section.

(5) If the notification required by subsection (1) of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fifteen (15) days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal.

SECTION 23. That Section 39-107, Idaho Code, be, and the same is hereby amended to read as follows:

39-107. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES ~~AND REGULATIONS~~. 1. The board of health and welfare shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members may be removed by the governor for cause. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector. Not more than four (4) members of the board shall be from any one (1) political party. All members of the board shall be chosen with due regard to their knowledge and interest in environmental protection and health.

2. The members of the board of environmental and community services, serving on the effective date of this act shall continue in office as members of the board of health and welfare, subject to the provisions of this act. Four (4) members of the board of environmental and community services shall be designated by the governor to serve terms on the board of health and welfare expiring on the first Tuesday following the first Monday of January, 1975. The remaining three (3) members of the board of environmental and community services shall serve terms on the board of health and welfare expiring on the first Tuesday following the first Monday of January, 1977. Thereafter, all members of the board of health and welfare shall serve four (4) year terms.

3. The board annually shall elect a chairman, a vice-chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided ~~by~~ in section 59-509(h), Idaho Code.

4. The board, in furtherance of its duties under this act and under its rules ~~and regulations~~, shall have the power to administer

oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

5. The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

6. Any person aggrieved by an action or inaction of the department of health and welfare shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules ~~and regulations~~ promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

7. Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for ~~a~~ review as prescribed ~~by~~ under the provisions of chapter 52, title 67, Idaho Code~~,--in-the-district-court-of-the-county-in-which--he--lives,--within thirty--(30)--days--after--receipt--of-the-notice-of-the-board's-final determination~~. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdic-

tional and the provisions of this section shall be the exclusive procedure for appeal.

8. The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the ~~regulations,~~ rules, codes, and standards of the department, that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state.

The ~~regulations,~~ rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment or the health of the state.

9. All rule making proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

10. All codes, rules~~,--regulations~~ and standards heretofore adopted by the department of public health, the board of health, and the air pollution control commission and board of environmental and community services, shall remain in full force and effect until superseded by rules~~,--regulations~~ and standards duly adopted by the board or until the same is rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code.

11. All of the powers and duties, rule making and hearing functions transferred to the board of environmental and community services ~~by~~ in chapter 87, ~~L~~laws of 1973, are hereby transferred to the board of health and welfare.

SECTION 24. That Section 39-605, Idaho Code, be, and the same is hereby amended to read as follows:

39-605. RULES ~~AND-REGULATIONS~~ FOR CARRYING OUT LAW. The state board of health and welfare is hereby empowered and directed to make such rules ~~and-regulations~~ as shall, in its judgment, be necessary for the carrying out of the provisions of this chapter, including rules ~~and--regulations~~ providing for the control and treatment of persons isolated or quarantined under the provisions of section 39-603, Idaho Code, and such other rules ~~and-regulations~~, not in conflict with provisions of this chapter, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules ~~and--regulations~~ so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter, and shall have the force and effect of law. Such rules may be amended from time to time by the state board of health and welfare. All rules ~~and-regulations~~ must be entered on the minutes of the state board of health and welfare and copies shall be furnished to all county and municipal health officers and to anyone else who may apply for same. ~~No s~~Such rules ~~or--regulations~~ shall be ~~effective-until thirty-(30)-days-after-it-is-adopted-by-the-state-board-of-health--and welfare~~ adopted and become effective in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 25. That Section 39-2002, Idaho Code, be, and the same is hereby amended to read as follows:

39-2002. INSPECTION -- RULES ~~AND REGULATIONS~~. The director of the department of health and welfare is hereby directed and empowered to inspect the places mentioned in section 39-2001, Idaho Code, and the board of health and welfare is directed and empowered to make such rules ~~and regulations~~ as are necessary to safeguard the public health, and to prevent the spread of contagious or infectious diseases, which rules ~~and regulations~~ shall be ~~posted and published in the manner provided in section 37-203~~ adopted in accordance with the provisions of chapter 52, title 67, Idaho Code, and any person violating any such rules ~~or regulations, when so posted and published,~~ shall be guilty of a misdemeanor, and upon conviction shall be fined a sum not to exceed fifty dollars ($50.00).

SECTION 26. That Section 39-4120, Idaho Code, be, and the same is hereby amended to read as follows:

39-4120. APPEALS TO BOARD -- JUDICIAL REVIEW. ~~(1)~~ The board shall, within twenty (20) days after receipt of notice for an appeal, hear such appeals brought before it by persons affected by any code, rule, regulation or decision pursuant to this act. Such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Final decisions of ~~by~~ the board, other than code interpretations, are ~~reviewable upon appeal to the district court in the county wherein the person praying for the appeal is a resident, or in the county of Ada, and shall be heard de novo~~ subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code.

~~(2) Appeals of board decisions shall be in such form and manner as provided by the Idaho rules of civil procedure.~~

SECTION 27. That Section 39-4404, Idaho Code, be, and the same is hereby amended to read as follows:

39-4404. CONSISTENCY WITH FEDERAL LAW. The legislature intends that the state of Idaho enact and carry out a hazardous waste program that will enable the state to assume primacy over hazardous waste control from the federal government.

The legislature finds that the RCRA, as amended, 42 U.S.C., Section 6901 et seq., and federal regulations adopted pursuant thereto, establish complex and detailed provisions for regulation of those who generate, transport, treat, store, and dispose of hazardous wastes. The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under RCRA. However, by the provisions of this chapter, the legislature desires to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems.

Therefore, the board is directed to promulgate rules ~~and regulations~~ which are in substance consistent with RCRA and the federal regulations adopted by the administrator of the United States environmental protection agency to implement RCRA. Until such time as the board has promulgated rules ~~and regulations~~ concerning mining and mineral wastes and materials under study by the administrator, those wastes and materials shall not be considered or defined as hazardous wastes

under this chapter; provided, however, that spent potliners from primary aluminum reduction, or environmental protection agency hazardous waste number K088, shall be defined as hazardous waste. Farmers and ranchers who treat, store, or dispose of waste pesticides from their operations on lands owned or controlled by them shall not be required by board rules ~~or regulations~~ to do anything more than follow the instructions on the pesticide label and triple rinse empty containers in accordance with the RCRA regulations of the environmental protection agency. The board may not promulgate any rule ~~or regulation~~ that would impose conditions or requirements more stringent or broader in scope than RCRA and the RCRA regulations of the environmental protection agency. The board may, however, promulgate procedural rules ~~and regulations~~ and rules ~~and regulations~~ specifically authorized by this chapter or other state statutes without showing that those rules ~~and regulations~~ are required by RCRA or the regulations of the environmental protection agency; provided that those rules ~~and regulations~~ shall not conflict with this section, other sections of this chapter, RCRA, or the ~~rules and~~ regulations of the environmental protection agency. Any rule ~~or regulation~~ promulgated by the board shall be valid until it is repealed or modified through the administrative process of ~~section 67-5201~~ chapter 52, title 67, Idaho Code~~, et seq~~.

SECTION 28. That Section 39-4909, Idaho Code, be, and the same is hereby amended to read as follows:

39-4909. APPEAL. Any applicant or person aggrieved by a decision of the ~~B~~board may, within ~~thirty (30)~~ twenty-eight (28) days of such decision, file an appeal in accordance with the provisions of ~~section 67-5215~~ chapter 52, title 67, Idaho Code; provided, that venue in any such appeal shall lie in the district court in the county within which the proposed health care facility or service is to be developed or offered.

SECTION 29. That Section 39-5814, Idaho Code, be, and the same is hereby amended to read as follows:

39-5814. DUTIES OF DIRECTOR UPON RECEIPT OF A SITING LICENSE APPLICATION -- RECOMMENDATION. (1) Upon receipt of a complete siting license application, the director or an authorized representative of the director shall:

(a) Immediately notify the permanent panel members, the city and/or county in which the hazardous waste treatment, storage, or disposal facility is located or proposed to be located, the state fire marshal, the director of the department of fish and game, the director of the department of law enforcement, and each division within the department that has responsibility in land, air or water management, and other appropriate agencies. The notice shall describe the procedure and the schedule based on the complexity of the application by which the siting license may be approved or denied.

(b) Immediately publish a notice that the application has been received, as provided in section 60-109, Idaho Code, in a newspaper having major circulation in the county and the immediate

vicinity of the proposed hazardous waste treatment, storage, or disposal facility. The required published notice shall contain a map indicating the location of the proposed hazardous waste treatment, storage, or disposal facility and shall contain a description of the proposed action and the location where the complete application package may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the siting license may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (3) of section 39-5812, Idaho Code. Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) If technical criteria are not applicable, the director shall submit to the panel a draft site license which includes conditions based on the information submitted in the application. The director shall also recommend to the panel that the license be issued or denied. The draft license submittal shall be made within sixty-five (65) days after a complete application is received.

(4) If technical criteria as adopted in the hazardous waste management plan are applicable, the director shall determine if the proposed facility complies with the criteria. Such determination shall be made within forty-five (45) days after a complete application is received. If the technical criteria are not met, the director shall deny the license and the panel shall be disbanded. If the technical criteria are met, the director shall submit to the panel a draft site license which includes conditions regarding the technical criteria to be met. These conditions may be more stringent than those in the plan if warranted by information provided in the application. The draft license may also include additional conditions based on the information submitted in the application regarding the construction of the facility. The director shall also recommend to the panel that the license be issued or denied. The denial or draft license submittal shall be made within sixty-five (65) days after a complete application is received. The director shall immediately notify the applicant and the chairman of the panel of the denial or draft license submittal.

(5) Within ten (10) days after submittal of a draft license, the panel shall meet to review and establish a timetable for the consideration of the draft site license.

(6) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed hazardous waste treatment, storage, or disposal facility, a description of the proposed action, and the location where the application for a siting license may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public

hearing held to receive public comment and input on the application for a siting license;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in section 60-109, Idaho Code.

(7) Comment and input on the proposed hazardous waste treatment, storage, or disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for fifteen (15) days after the public hearing date.

(8) The panel shall consider, among other things:

(a) The risk and impact of accident during the transportation of hazardous waste;

(b) The risk of fires or explosions from improper treatment, storage, or disposal methods;

(c) The impact on local units of government where the proposed hazardous waste treatment, storage, or disposal facility is to be located in terms of health, safety, cost and consistency with local planning and existing development. The panel shall also consider city and county ordinances, permits or other requirements and their potential relationship to the proposed hazardous waste treatment, storage, or disposal facility;

(d) The nature of the probable environmental impact.

(9) The panel's primary responsibility shall be to consider the concerns and objections submitted by the public. The panel shall facilitate efforts to provide that the concerns and objections are mitigated by proposing additional conditions regarding the construction of the facility. The panel may propose conditions which integrate the provisions of the city or county ordinances, permits or requirements.

(10) Within ninety (90) days after creation, the panel shall recommend to the director that the license be issued as proposed, issued with different or additional conditions, or denied. The director shall make a final decision within thirty (30) days after receipt of the panel's recommendation. If the panel recommends different or additional conditions, a clear statement of the need for the condition must be submitted to the director. If the panel recommends denial, a clear statement of the reasons for the denial must be submitted to the director.

(11) The director shall issue a siting license if the director determines that:

(a) The technical criteria are met;

(b) The harm to scenic, historic, cultural or recreational values is not substantial or can be mitigated by appropriate license conditions;

(c) The risk and impact of accident during transportation of hazardous waste is not substantial or can be mitigated with appropriate license conditions;

(d) The impact on local government is not adverse regarding health, safety, cost and ~~consistencey~~ consistency with local planning and existing development or can be mitigated with appropriate license conditions; and

(e) No other major concerns have been raised by the panel regard-

ing public health or the environment which cannot be mitigated by special license conditions.

(12) An applicant denied a siting license pursuant to this chapter or any person aggrieved by a decision of the director pursuant to this chapter may within ~~sixty (60)~~ twenty-eight (28) days, after all remedies have been exhausted under the provisions of this chapter, seek judicial review under the procedures provided in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

(13) No permit pursuant to section 39-4409, Idaho Code, shall be issued unless the applicant has been issued a site license.

SECTION 30. That Section 41-242, Idaho Code, be, and the same is hereby amended to read as follows:

41-242. METHOD OF APPEAL. All appeals from the director shall be brought in accordance with the procedures set forth in ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 31. That Section 41-1435, Idaho Code, be, and the same is hereby amended to read as follows:

41-1435. APPEAL FROM THE DIRECTOR. Any person, insurer and rating bureau aggrieved by any order made by the director under this chapter or chapter 16 (workmen's compensation rates), may ~~appeal therefrom to the district court of the third judicial district of the state of Idaho for Ada County within thirty (30) days after service of such order. Such appeal shall be taken by serving upon the director, and filing with the clerk of such court, notice of appeal, together with a copy of the order appealed from, a copy of the notice of hearing,~~ and seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code. The petition for judicial review shall be accompanied by an undertaking in the sum of five hundred dollars ($500), with one or more qualified sureties, conditioned to pay all the costs that may be awarded against the ~~appellant~~ petitioner upon ~~the appeal. The appeal shall be heard de novo in the district court in the manner provided by law for the trial of suits in equity. The court shall determine by its decree or order the extent the order of the director shall be modified, affirmed or reversed~~ judicial review. Either the director or any person, insurer or rating bureau aggrieved by the order or decree of the district court may appeal therefrom to the Supreme Court of the state of Idaho in the same manner as provided by law for an appeal from a final judgment.

SECTION 32. That Section 42-203D, Idaho Code, be, and the same is hereby amended to read as follows:

42-203D. REVIEW OF PERMITS -- OPPORTUNITY FOR HEARING. (1) The director of the department of water resources shall review all permits issued prior to July 1, 1985, which propose to divert water held in trust by the state of Idaho pursuant to subsection (5) of section 42-203B, Idaho Code, except to the extent a permit has been put to beneficial use prior to July 1, 1985, to determine whether they comply with the provisions of section 42-203C, Idaho Code. If the department

finds that the proposed use is allowed under section 42-203C, Idaho Code, then the department shall enter an order continuing the permit. If the department finds that the proposed use is not allowed under section 42-203C, Idaho Code, then the department shall either cancel the permit or impose the conditions required to bring the permit into compliance with section 42-203C, Idaho Code.

(2) The department shall provide an opportunity for hearing in accordance with section 42-1701A, Idaho Code, and ~~sections 67-5209 through 67-5215~~ chapter 52, title 67, Idaho Code, for each holder of a permit that is proposed either to be cancelled or made subject to new conditions.

SECTION 33. That Section 42-238, Idaho Code, be, and the same is hereby amended to read as follows:

42-238. WELL DRILLERS. (1) Powers and duties. The director of the department of water resources is hereby vested with the duties relating to the licensing of well drillers as provided for in this act so as to protect the ground water resources against waste and contamination. Qualifications for well drillers shall be adopted by rule of the water resource board. The water resource board is authorized to adopt a code of standards of well construction necessary to protect the ground water resources as set forth in this act, to be enforced by the director. The director of the department of water resources is also charged with the responsibility of collecting and filing for public use the well drillers' reports that are required in this act.

(2) Licensing of well drillers. It shall be unlawful for any person after July 1, 1967 to drill a well in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, without first obtaining a driller's license as provided herein. For the purpose of this act, a "person" shall be defined as any individual who drills a water well for himself or another in this state; it shall also be defined as any firm, copartnership, corporation or association which drills or contracts to drill a water well for hire or otherwise in this state except that employees of said firm, copartnership, corporation or association authorized to operate drilling equipment as the contractor's agent, shall not be required to obtain an individual well drilling license provided that the names and addresses of such employees are recorded with the director of the department of water resources. The license shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a twenty-five dollar ($25.00) licensing fee. To determine the applicant's qualifications, the director may require detailed information on the driller's past experience, and/or references, and/or an oral examination, and/or a written examination. The water resource board shall adopt rules ~~and regulations~~ for licensing of well drillers in compliance with chapter 52, title 67, Idaho Code, and shall consider such factors as the applicant's (1) knowledge of Idaho water laws and the rules ~~and regulations~~ of the water resource board in connection with the drilling of wells, (2) knowledge of proper well construction procedures and the water well construction standards adopted by the water resource board as provided in this act, (3) knowledge of the various types of drilling tools and their use, (4) general knowl-

edge of underground geology and ground water hydrology and their relation to well construction, (5) ownership or access to equipment capable of adequately constructing a well, (6) knowledge of types of well casing and their use, (7) knowledge of special well drilling problems and their solution, and (8) previous drilling experience. In addition, the water resource board shall adopt rules ~~and regulations~~ setting forth additional requirements for licensing well drillers who shall drill wells for the production of low temperature geothermal resources as defined in section 42-233, Idaho Code, or for the production of geothermal resources as provided in chapter 40, title 42, Idaho Code. A copy of the proposed rules ~~and regulations~~ for licensing of well drillers shall be furnished to each well driller holding a current license at the time such proposed rules ~~and regulations~~ are promulgated.

If it is determined that the applicant is not qualified, the director shall deny the application and refund the licensing fee. If it is determined that the applicant is qualified, a license shall be issued upon the filing with the director of a surety bond or cash bond in the penal sum of not less than five thousand dollars ($5,000), or more than twenty thousand dollars ($20,000) as determined by the director based on the size and depth of the wells the applicant proposes to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, and other relevant factors the director determines are in the public interest. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter, chapter 40, title 42, Idaho Code, and rules ~~and regulations~~ promulgated pursuant thereto. Such bond shall be made payable to the director. A license issued under this section shall expire on June 30 of each year or upon revocation of the license by the director as provided for in this act. The license can be renewed effective July 1 of each year upon written application on forms provided by the director and the filing of a ten dollar ($10.00) renewal fee. The renewal request must be accompanied by a new bond or evidence that the previous bond is still in effect. The renewal may then be granted by the director if he determines that the driller has complied with the rules ~~and regulations~~ promulgated pursuant to this act. The fees collected for the licensing of well drillers shall be deposited in a special fund with the state treasurer with other fees collected by the director.

The licensed driller shall have a card on hand, provided by the director to indicate his present license at all times when he is operating the drilling equipment. The director may also require other identification to be posted on the drilling equipment as he deems helpful in the administration of this act.

(3) Well driller's report. In order to enable a comprehensive survey of the extent and occurrence of the state's ground water resource, every well driller is hereby required to keep a well log and pertinent data concerning each well, and its construction, that is drilled by him in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, and complete a report on forms furnished by the director. These reports shall be properly prepared and signed by the driller and deposited with the director within thirty (30) days following the completion of the well. When the driller signs

the report, the driller shall attest that all information on the report is accurate to the best of the driller's knowledge and that the driller has met all minimum well construction standards, low temperature geothermal resource well construction standards and geothermal resource well construction standards as adopted by the water resource board. The report shall become a permanent record in the office of the director for hydrologic and geologic analysis and research, and shall be available for public use. The report shall include such data as the director deems necessary to provide the information that will be valuable for future reference and study.

(4) Well construction standards. The water resource board shall adopt minimum standards for water well construction, low temperature geothermal resource well construction and geothermal well construction in this state under the provisions of chapter 52, title 67, Idaho Code. Such standards shall require each well to be so constructed as to protect the ground water of the state from waste and contamination and may include additional requirements for wells drilled in "areas of drilling concern" as designated in accordance with subsection (7) of this section. Every licensed well driller will be furnished a copy of the adopted standards by the director of the department of water resources, and will be required to construct each well drilled after July 1, 1987, in compliance with the adopted standards.

(5) Penalties for violation. Drilling of a well without first obtaining a license as required in section 42-238(2), Idaho Code, shall be a criminal misdemeanor, and the employees of the department of water resources are hereby empowered to issue Idaho uniform citations, as provided by the rules of the court for magistrates division of the district court and district court, to any person who drills a well without first obtaining the required license. Failure of the driller to comply with the provisions of section 42-238(3), Idaho Code, will allow the director to proceed to collect the necessary data on the well or wells in any manner available to him, and the cost of this data collection may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

Failure of the driller to comply with the provisions of section 42-238(3), Idaho Code, is also cause for the director to revoke an active license, or refuse to renew a license, until such time as the well driller's report or reports are properly completed and on file in the office of the director. If it is found that a driller has intentionally submitted inaccurate or false information in the signed well driller's report as provided in subsection (3) of this section, or has failed to file a report within the time frame required, the driller shall be liable for a civil penalty not in excess of ten thousand dollars ($10,000) which shall be paid into the water administration account. In addition, this shall be cause for the director to suspend an active license for a period not in excess of one (1) year or to not renew a license.

Failure of the driller to comply with the provisions of section 42-238(4), Idaho Code, will allow the director to proceed to repair or reconstruct or plug a well so that it complies with the adopted minimum standards of well construction, and the costs of this work may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

Failure of the driller to comply with the provisions of section 42-238(4), Idaho Code, is also cause for the director to revoke an active license or refuse to renew a license until such time as the well driller has repaired or reconstructed the well or wells so that they meet the adopted minimum standards. The director may also require that the well driller present evidence to show that he and his equipment are now capable of constructing a well in a proper manner, before the license is renewed.

(6) Appeals. Refusal to issue, refusal to renew, or revocation of a well driller's license by the director shall be cause for the well driller to seek a public hearing before the water resource board. No formal petition shall be required from the affected driller, but a simple statement, in writing, requesting a hearing shall be sufficient. The board shall notify the driller, and the director, of the date set for the hearing, which shall be at least fifteen (15) days after the notice is sent by certified mail to the well driller at his address of record with the department. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and rules of practice and procedure adopted by the water resource board. Any party to the hearing may seek judicial review of any final order of the water resource board pursuant to ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

(7) Drilling in a designated "area of drilling concern". The director of the department of water resources may designate as he determines necessary, "areas of drilling concern" on an aquifer by aquifer basis within which drillers must comply with the additional requirements of this section. The director shall designate "areas of drilling concern" to protect public health and to prevent waste or contamination of ground or surface water because of factors such as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters. It is unlawful for any person not meeting the requirements of this subsection to drill a well for any purpose in a designated "area of drilling concern". Any person drilling a new well or deepening or modifying an existing well for any purpose in an "area of drilling concern" as designated by the director as herein provided shall comply with the following additional requirements:

(a) Additional bonding requirements, as determined by the director, to insure that the well is constructed or abandoned in compliance with the adopted standards for well construction.

(b) Additional experience and knowledge in drilling wells encountering warm water or pressurized aquifers as required by rules ~~and regulations~~ adopted by the water resource board.

(c) Document that specialized equipment needed to drill wells in "areas of drilling concern," as determined by the director, is or will be available to the driller.

(d) Provide a notice of intent to drill, deepen or modify a well, submit plans and specifications for the well and a description of the drilling methods that will be used, as required by the director, and receive the written approval of the director before com-

mencing to drill, deepen, or modify any well in a designated "area of drilling concern".

Prior to designating an "area of drilling concern," the director shall conduct a public hearing in or near the area to determine the public interest concerning the designation. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area prior to the date set for hearing.

In the event an area has been designated as an "area of drilling concern" and the director of the department of water resources desires to remove such designation or modify the boundaries thereof, he shall likewise conduct a public hearing following similar publication of notice prior to taking such action.

SECTION 34. That Section 42-1605, Idaho Code, be, and the same is hereby amended to read as follows:

42-1605. ENFORCEMENT -- PENALTIES -- JUDICIAL REVIEW. (1) Enforcement procedure.

(a) If the director believes a person has violated any provision of section 42-1601, Idaho Code, or any regulation promulgated by the board or any order issued by the director pursuant thereto, the director shall notify the person in writing by certified mail or personal service of the alleged violation. This notice of violation shall specify the following:

1. The statutory provisions, regulation or order alleged to have been violated;

2. The facts or conduct forming the basis of the alleged violation;

3. A proposed order for any corrective action necessary for compliance with this section and a reasonable time period for completing any such corrective action, a civil penalty to be imposed pursuant to subsection (2) of this section; and

4. That the person has thirty (30) days from the receipt of the notice of violation or such longer time period as may be stated in the notice of violation in which to correct the violation and to file a report of corrective action taken, or the person must notify the director, in writing, within fifteen (15) days from receipt of the notice of violation that he wishes to contest the alleged violation, proposed order, or proposed civil penalty.

(b) If a person notifies the director in writing within fifteen (15) days from receipt of the notice of violation that he intends to contest the alleged violation and proposed order, the director shall afford the person an opportunity for a hearing before the water resource board or its appointee and such hearing shall be conducted in accordance with the rules of practice and procedure promulgated by the board.

(2) Civil penalties.

(a) Any person owning or controlling an artesian well, who has been determined by the director to have violated any provisions of this chapter, regulation promulgated by the water resource board pertaining to well construction standards, or order of the director issued pursuant to this chapter, shall be liable for a civil

penalty or penalties, not to exceed three hundred dollars ($300) and for a civil penalty or penalties, not to exceed one hundred dollars ($100) per day for each day that the violation continues after notice of the violation has been given as provided in subsection (1)(a) of this section.

(b) All civil penalties owed under this section shall be paid to the director within thirty (30) days from the issuance of the final order imposing such penalty. The director may impose an additional civil penalty of twenty-five dollars ($25.00) for each day that payment of the civil penalty is late. The director shall deposit all civil penalties collected into the water administration account. Civil penalties may be recovered in a civil action brought in the district court in accordance with subsection (3)(c) of this section.

(3) Judicial review.

(a) Any person aggrieved by a final order of the director entered pursuant to this section may appeal to the district court within ~~thirty (30)~~ twenty-eight (28) days of the issuance of the order. Such appeal shall be heard and determined in accordance with ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

(b) The director may petition the district court for injunctive relief or a temporary restraining order in order to prevent irreparable damage pending the outcome of enforcement proceedings pending before the director pursuant to this section.

(c) The director may commence a civil action in the district court to enforce the provisions of any final order of the director issued pursuant to this section. If no appeal is taken pursuant to subsection (1)(a) of this section, the director's findings of fact and order, including an order deemed final pursuant to subsection (1)(b)2. of this section, shall be conclusive in connection with any action commenced by the director to enforce such order.

(4) Criminal penalties. Any person who willfully or negligently violates any of the provisions of this chapter shall, for each offense, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than three hundred dollars ($300) and not more than one thousand dollars ($1,000). Each day upon which such violation occurs shall constitute a separate violation.

SECTION 35. That Section 42-1607, Idaho Code, be, and the same is hereby amended to read as follows:

42-1607. INVENTORY OF ARTESIAN WELLS -- PLUGGING WELLS. (1) The director of the department of water resources shall initiate a program to inventory and locate artesian wells throughout the state.

(2) The director of the department of water resources shall plug abandoned artesian wells or artesian wells where the owner cannot be ascertained.

(3) For artesian wells which are not in compliance with Idaho minimum well construction standards, the owner shall be required to have the well repaired in compliance with Idaho minimum well construction standards promulgated pursuant to section 42-238, Idaho Code, so as to preclude the wasting or commingling of water. The repairs shall be paid for by the owner of the well, and if repairs are not made

within a maximum of one (1) year following notification, the director of the department of water resources may order the owner to plug the well. The director upon good cause shown may grant an additional time period not in excess of two (2) years for the owner to make repairs of the well. If the well is not plugged within thirty (30) days of the order, or other longer time period as provided in the order, the director may plug or cause the well to be plugged at the owner's expense. For the period of July 1, 1987, to June 30, 1992, the director of the department of water resources shall promulgate rules ~~and regulations~~ to implement a cost-sharing program to assist owners of wells which have been ordered repaired or plugged pursuant to this subsection. The rules ~~and regulations~~ shall provide that up to fifty percent (50%) of the cost of the repairs or plugging shall be paid by the department of water resources based on an applicant's ability to pay and moneys available for this purpose.

(4) Any person owning or controlling an artesian well which has been ordered repaired or plugged by the director of the department of water resources pursuant to subsection (3) of this section shall be liable for the costs of the repair or plugging if it was undertaken by the department of water resources. All moneys ~~owned~~ owed under the provisions of this section shall be paid to the director. The director shall charge interest on the amount owed in an amount no greater than twelve ~~per cent~~ percent (12%) per annum. The director shall deposit all moneys collected into the water administration account. Moneys owed pursuant to the provisions of this section shall be collected in a civil action brought in the district court in accordance with subsection (5) of this section.

(5) Any person aggrieved by a final order of the director entered pursuant to the provisions of this section may appeal to the district court within ~~thirty (30)~~ twenty-eight (28) days of the issuance of the order. The appeal shall be heard and determined in accordance with ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code. The director through the attorney general may petition the district court for injunctive relief or a temporary restraining order to prevent irreparable damage pending the outcome of proceedings before the director pursuant to the provisions of this section. The director through the attorney general may commence a civil action in the district court to enforce the provisions of any final order of the director issued pursuant to the provisions of this section.

SECTION 36. That Section 42-1701A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1701A. HEARINGS BEFORE DIRECTOR -- APPEALS. (1) All hearings required by law to be held before the director shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules of ~~practice and~~ procedure promulgated by the director~~, except that if the director has issued a proposal for decision in accordance with section 67-5211, Idaho Code, oral arguments before the director on exceptions to the proposal for decision shall be heard at the discretion of the director~~.

(2) The director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director. In such

event, the hearing officer shall have the duty to make a complete record of the evidence presented and duly received at the hearing and to prepare a proposal for decision in accordance with ~~section--67-5211~~ chapter 52, title 67, Idaho Code, and rules of ~~practice and~~ procedure promulgated by the director.

(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing may be had pursuant to subsection (4) of this section.

(4) Any person who is aggrieved by a final decision or order of the director is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 37. That Section 42-1734D, Idaho Code, be, and the same is hereby amended to read as follows:

42-1734D. DESIGNATION OF INTERIM PROTECTED RIVERS. (1) Prior to the adoption of a comprehensive plan for a waterway, the board may designate a waterway as an interim protected river. Any state agency may petition the board to designate a waterway as an interim protected river. The board shall promulgate procedural rules for designation of interim protected rivers. The rules shall provide adequate notice to interested parties of any petitions filed or actions contemplated pursuant to this act.

(2) The board shall determine whether the nominated waterway merits designation as an interim protected river. The board shall accept or reject a nomination within six (6) months after it is filed. There shall be no review of any board decision rejecting or accepting a nomination for an interim protected river. Designation of a waterway as an interim protected river shall be based upon a determination that:

(a) It is probable that the waterway would be designated a protected river in the comprehensive state water plan; and

(b) Interim protected river status is necessary to protect the values that would support such waterway's designation as a protected river in a comprehensive state water plan.

(3) In designating a waterway for interim protected river status, the board shall indicate which of the activities listed in subsection 42-1734A(5), Idaho Code, shall be prohibited.

(4) Interim protected river status shall remain in effect until the earliest of:

(a) The adoption of a comprehensive state water plan for the

waterway designated as an interim protected river;

(b) Two (2) years following the designation of an interim protected river unless extended by law;

(c) The revocation of a waterway's interim protected river status by law.

(5) Any person may petition the board for a determination that a particular proposed action or project will not significantly impair the values supporting a waterway's designation as an interim protected river. The board shall consider among other things environmental impact statements, technical studies and any other relevant comments or recommendations prepared by the petitioner for use before other state or federal agencies. The board may also consider any other relevant information. If the board determines that the proposed action or project will not significantly impair the values supporting a waterway's designation as a protected river, then this section shall not apply to such action or project, except that the board, after consultation with relevant state agencies, may impose appropriate conditions on such action or project. An aggrieved party may seek judicial review of the board's decision pursuant to ~~sections--67-5215--and 67-5216~~ chapter 52, title 67, Idaho Code.

(6) If a waterway is designated as an interim protected river, then the board shall proceed to prepare a comprehensive state water plan for the waterway. The board shall in preparing the state comprehensive water plan for the waterway consider, after review of all relevant factors contained in section 42-1734A, Idaho Code, whether the designation should continue or whether modification of the designation is warranted.

(7) If the designation of a waterway as an interim protected river is either revoked by law, or terminated as provided in this section, then the waterway shall not be eligible for designation as an interim protected river for a period of two (2) years following the revocation or termination of its interim protected river status.

SECTION 38. That Section 42-1737, Idaho Code, be, and the same is hereby amended to read as follows:

42-1737. BOARD APPROVAL -- CRITERIA -- HEARINGS -- APPEALS -- DEFINING A MISDEMEANOR -- INJUNCTIONS. (a) All project proposals involving the impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre-feet shall be submitted to the board for its approval or disapproval. No construction shall be commenced on any such project nor shall any diversion be permitted prior to receipt of board approval as herein provided and the board may institute injunctive proceedings to halt such construction or diversion. In the event a project is disapproved, this fact shall be certified by the board to the director of the department and such certification shall constitute the petition for cancelation of permit required by section 42-302, Idaho Code, and, pursuant to such certification, the procedure for cancelation of permit issued for such project shall be carried forward by said director.

(b) In determining whether a project proposal shall be approved, or disapproved, the board shall be guided by the following criteria:

1. Conserving the highest use of the water for all purposes.

2. The maximum economic development of the waters involved.

3. The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

4. That sufficient water is available for appropriation for beneficial use.

5. The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

6. That all vested and inchoate rights to the waters of this state or to the use thereof have been protected by the issuance of a permit for the project by the director of the department.

7. The state water policy formulated under other laws of this state.

(c) The board shall by regulation, establish procedures for notice and hearing on those project proposals which must be submitted to the board and may authorize hearings by hearing officers. The board or its hearing officer shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers which shall be served and returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum it shall be the duty of the district court in any county of this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt as in the case of a subpoena issued by a regularly constituted court. The sponsor of a project who appears before the board shall have similar powers and shall have the right to be represented by counsel. If the sponsor does not appear at the appointed time, and his absence is without sufficient cause, the board shall have the right to proceed in his absence or may consider absence to constitute an admission of facts contrary to the position of the sponsor. The board shall make findings of fact and conclusions of law leading to its approval or disapproval.

(d) Any sponsor of a project which has been disapproved shall have the right to have the proceedings of the board reviewed by the district court in the county of his residence. With the exception that judicial review may be had by the district court of the county of the residence of the sponsor, such judicial review shall be accomplished in accordance with the provisions ~~and standards~~ of ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 39. That Section 42-3805, Idaho Code, be, and the same is hereby amended to read as follows:

42-3805. DECISION OF DIRECTOR -- HEARING -- REVIEW BY DISTRICT COURT. Based upon his own investigation and the recommendations and alternate plans of other state agencies, the director shall prepare and forward to the applicant his decision approving the application in whole or in part or upon conditions, or rejecting the application. With regard to applications which could, if issued, affect endowment lands, the director shall deny such applications upon the objection of the state department of lands, or modify the same as recommended by

the department. Within fifteen (15) days of the date of mailing of the decision, the applicant shall notify the director if it refuses to modify its plans in accordance with such decision or that it requests a hearing before the board thereon. If requested, such hearing shall be held in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules ~~and regulations~~ adopted by the board. The board shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records and papers as it may desire at the hearing, and for that purpose, the board may apply to the court for subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers which shall be served and returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum, it shall be the duty of the district court in any county of this state in which disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt. Upon the conclusion of the hearing and completion of any investigation conducted by the director the board shall enter its findings in writing approving the decision of the director on the application and plans in whole or in part, or upon conditions, or rejecting the decision of the director on said application and plans for such proposed stream channel alteration.

A copy of the board's findings on the director's decision shall be mailed to the applicant and to each person or organization who appeared at the hearing and gave testimony in support of or in opposition to the proposed stream channel alteration. Any applicant or other person appearing at a hearing shall have the right to have the proceedings of the board and the decision of the director reviewed by the district court in the county where the stream channel alteration is proposed. With the exception that the matter may be reviewed by the district court in the county where the stream channel alteration is proposed, judicial review shall be had pursuant to ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 40. That Section 42-4005, Idaho Code, be, and the same is hereby amended to read as follows:

42-4005. PERMIT -- ISSUANCE -- BOND -- REVIEW -- APPEAL. (a) If the director finds that the well or the injection well as proposed to be constructed or altered is in the public interest, he shall issue a permit. The director may issue a permit substantially in accordance with the specifications on the application, or the director may limit the scope of the permit granted or may issue a permit subject to conditions.

(b) If the director finds that the well or injection well as it is proposed to be constructed or altered in the application will not be in the public interest, he shall refuse to issue a permit. In no case shall the director issue a permit to construct or alter a well or injection well if he finds that use of the proposed well or injection well may be expected to unreasonably reduce the quality of any surface or ground waters below the quality which such waters would have had but for the proposed well.

(c) If the director refuses to issue a permit, or issues one sub-

ject to conditions or limitations, he shall issue a clear statement of his reasons for refusing to issue or issuing the limited permit. The director shall issue a statement of findings of fact and conclusions of law that provide a factual and legal basis for the order. The refusal of the director to issue a permit, together with the clear statement of the reasons for refusing to issue the permit shall be served on the applicant by certified mail. A permit issued conditionally or subject to limitations shall, with the statement of reasons required under this subdivision, be served in the same manner as a refusal to issue a permit.

(d) An applicant denied a permit or issued a limited or conditional permit may seek a public hearing before the water resource board. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code. Judicial review of the final determination by the board may be secured pursuant to ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

(e) The director shall not issue a permit if he finds that the operation of any well under a proposed permit will unreasonably decrease ground water available for prior water rights in any aquifer or other ~~ground-water~~ ground water source for water for beneficial uses, other than uses as a mineral source, an energy source, or otherwise as a material medium, unless and until the applicant has also obtained a permit for the appropriation of ground waters under chapter 2, title 42, Idaho Code.

(f) The director shall require, as a condition of every permit, every person who engages in the construction, alteration, testing, or operation of a well to file with the director, on a form prescribed by the director, a bond indemnifying the state of Idaho providing good and sufficient security, conditioned upon the performance of the duties required by this chapter and the proper abandonment of any well covered by such permit. The bond shall be in an amount not less than five thousand dollars ($5,000) or more than one hundred thousand dollars ($100,000) as determined by the director based on the size and depth of the well, the complexity of the well, the resource to be recovered, the area of operation, and other relevant factors.

SECTION 41. That Section 42-4012, Idaho Code, be, and the same is hereby amended to read as follows:

42-4012. RESIDENT AGENT -- ACTIONS -- HEARINGS -- APPEALS. (a) Every permit holder, owner, and operator of any well shall designate to the director an agent who resides in this state upon whom may be served all orders, notices, or permits issued by the director.

(b) Any person adversely affected by any order, including orders following hearings held pursuant to this chapter, served on him by the board or the director may bring an appeal therefrom to the district court within ~~thirty (30)~~ twenty-eight (28) days of such service, or, if he has not had a hearing before the board, he may request a hearing at such time. Such appeals shall be accomplished and reviewed pursuant

to ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

(c) Nothing contained in this section shall preempt any right of any person to any writ or other relief available in a civil action.

(d) Nothing contained in this act shall preempt any public nuisance or similar law of this state.

(e) All orders, permits, and notices issued by the director or the board under this act shall also bind and be effective on all successors and assigns of the persons to whom such orders, permits, and notices are addressed.

SECTION 42. That Section 47-324, Idaho Code, be, and the same is hereby amended to read as follows:

47-324. RULES ~~AND REGULATIONS~~ FOR COMMISSION. (a) The commission ~~shall~~ may prescribe rules ~~and regulations~~ governing the ~~practice and~~ procedure before it, ~~pursuant~~ subject to the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code.

(b) In all cases where (1) there is an application for the entry of a pooling order or (2) there is an application for an exception from an established well spacing pattern or (3) a complaint is made by the commission or any party that any provision of this act, or any rule~~, regulation~~ or order of the commission is being violated, notice of the hearing to be held on such application or complaint shall be served on the interested parties in the same manner as is provided in the Rrules of ~~C~~civil P~~p~~rocedure for the service of summons in civil actions.

(c) ~~All rules, regulations and orders issued by the commission shall be in writing, shall be entered in full in books to be kept by the commission for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. All rules and regulations shall be printed and copies thereof shall be available to any person upon payment of a reasonable charge therefor. Except for orders establishing or changing Rules of Practice and Procedure, all orders made and published by the commission shall include or be based upon written findings of fact, which said findings of fact shall be entered and indexed as public records in the manner hereinafter provided. A copy of any rule, regulation, finding of fact, or order, certified by the commission or by its director, shall be received in evidence in all courts of this state with the same effect as the original.~~

~~(d)~~ The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition for a hearing concerning any matter within the jurisdiction of the commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. ~~The commission shall enter its order within thirty (30) days after the hearing.~~ Proceedings before the commission and judicial review of actions taken by the commission pursuant thereto shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any person affected by an order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same.

SECTION 43. That Section 47-718, Idaho Code, be, and the same is hereby amended to read as follows:

47-718. VIOLATIONS -- REMEDIES -- PENALTIES. (1) In addition to any other penalties and remedies of this chapter and at law, any person, firm, or corporation who violates any provisions of this chapter or ~~regulations~~ rules adopted pursuant thereto, or who fails to perform the duties imposed thereby, or who violates any determination or order thereunder or any violation of a lease granted under this chapter, the director of the department of lands may:

(a) Proceed by legal action in the name of the state of Idaho to enjoin the violation, by temporary restraining order, preliminary injunction and/or permanent injunction.

1. The court, or a judge thereof at chambers, if satisfied from a verified complaint or by affidavit that the alleged violation has been or is being committed, may issue a temporary restraining order, without notice or bond, enjoining the defendant, his agents, employees, contractors and assigns from further violation, or from conducting exploration or mining on the state lands affected by the violation.

2. The verified complaint or affidavit that the alleged violation has been or is being committed shall constitute prima facie evidence of great or irreparable injury and/or great waste sufficient to support the temporary restraining order.

3. The action shall thereafter proceed as in other cases for injunctions. If at the trial the violation is established, the court shall enter a decree perpetually enjoining said defendant, his agents, employees, contractors and assigns from thereafter committing said or similar violations.

(b) Proceed by legal action in the name of the state of Idaho to obtain an order requiring the operator to promptly repair the damage and reclaim the state lands in accordance with the requirements of section 47-703A, Idaho Code, and ~~regulations~~ rules adopted pursuant thereto. If thereafter the court finds that the operator is not promptly complying with such order, the court shall order the operator to immediately pay an amount determined by the department to be the anticipated cost of reasonable repair and reclamation in accordance with section 47-703A(2), Idaho Code, and ~~regulations~~ rules adopted pursuant thereto.

(c) Proceed to forfeit the operator's bond required by sections 47-703A(1), 47-704(6) or 47-708, Idaho Code. The board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which includes a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the lessee, an officer of a corporate lessee, or the designated agent of the lessee shall constitute service. The lessee shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the lessee fails to answer the complaint and request a hearing, the matters asserted

in the complaint shall be deemed admitted by the lessee, and the board may proceed to forfeit the bond in the amount necessary to reclaim affected lands and pay for any outstanding royalties and related administrative costs. The director of the department of lands is empowered to issue subpoenas. The hearing shall be conducted in accordance with ~~sections 67-5209 through 67-5213~~ chapter 52, title 67, Idaho Code. The hearing officer shall enter an order in accordance with ~~section 67-5212~~ chapter 52, title 67, Idaho Code. Appeal to a district court shall be in accordance with ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

(d) Cancel the lease in accordance with section 47-707, Idaho Code.

(2) In addition to the injunctive remedies of subsection (1)(a) of this section,

(a) Proceed in the first instance by legal action in the name of the state of Idaho to recover from an operator who without bond has conducted or is conducting exploration with heavy equipment on state lands, including lands between the ordinary high watermarks of navigable rivers, the cost of repairing damage to and reclaiming the affected state lands in accordance with section 47-703A(2), Idaho Code, and ~~regulations~~ rules adopted pursuant thereto; or if the bond on file with the department of lands is not sufficient to adequately reclaim the affected state lands, to recover the cost in excess of the bond to reclaim the affected state lands in accordance with section 47-703A(2), Idaho Code, and ~~regulations~~ rules adopted pursuant thereto.

(b) Proceed by legal action in the name of the state of Idaho to recover from an operator who has removed minerals in commercial quantities from state lands, including lands between the ordinary high watermarks of navigable rivers, in violation of the provisions of section 47-717, Idaho Code, damages in the amount of the prevailing royalty rate set by the board of land commissioners for the particular mineral removed plus interest from the date of removal at the average annual interest rate of the investment board from the date of removal to judgment.

(3) In addition to any other penalties or injunctive remedies of this chapter, any person, firm, or corporation who violates any of the provisions of this chapter or ~~regulations~~ rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this chapter, shall be liable to a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which any provision of this chapter, ~~regulation~~ rule or order has been or is being violated. All sums recovered shall be credited to the general fund.

(4) An appeal from a final judgment of the district court shall be taken in the manner provided by law for appeals in civil cases.

SECTION 44. That Section 47-1318, Idaho Code, be, and the same is hereby amended to read as follows:

47-1318. TERMINATION OF PERMITS -- HEARING. Without in any manner affecting the penal and injunctive provisions of this act the Idaho

state board of land commissioners is empowered to commence proceedings to terminate any permit to conduct dredge or other placer mining operations issued hereunder for any violation of the terms of this act, after having issued and served upon the permittee alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the permittee allegedly is violating, and a statement of the manner in and the extent to which said permittee is alleged to be violating the provisions of this act. Such notice may be served by certified mail, and return receipt signed by the permittee or his agent shall constitute service and time thereof of such notice. The permittee shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the permittee fails to answer the complaint and to request a hearing, the matters asserted in the complaint shall be deemed admitted by the permittee, and the board may proceed to terminate the permit and forfeit the bond in an amount necessary to pay all costs and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of the defaulting permittee. Upon request for a hearing by a permittee, the board shall schedule a hearing ~~before--a--hearing officer--appointed--by--the--board-at-a-time~~ not less than thirty (30) days after the date the permittee requests a hearing. ~~The-board--shall make--findings-of-fact-and-rulings-of-law-in-support-of-any-order-terminating-a-permit-or-forfeiting-a-bond;-and-assess-the-costs--of--such hearing-against-the-defaulting-permittee~~ The provisions of chapter 52, title 67, Idaho Code, shall govern proceedings instituted pursuant to this section. The ~~said~~ board ~~of-land-commissioners~~ may designate one (1) of its members, or a hearing officer or officers to conduct any hearings ~~and-make-findings-of-fact;-rulings-of-law;~~ and enter recommended or preliminary orders, as determined by the board, on issues involving the administration of this act.

Upon entry of a final order terminating a permit or forfeiting a bond, the board shall assess the costs of the hearing against the defaulting permittee.

SECTION 45. That Section 47-1320, Idaho Code, be, and the same is hereby amended to read as follows:

47-1320. HEARING PROCEDURES AND APPEALS. (a) Process and procedure under this act shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity. Such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. The board, or any member thereof, or the hearing officer designated by such board, shall have power to subpoena witnesses and administer oaths. The district court shall have power to enforce by proper proceedings the attendance and testimony of witnesses, and the production for examination of books, papers and records. ~~A--stenographic--report--of--the--testimony-at-any-hearing-shall-be-made.~~ Witnesses subpoenaed by the board or a member thereof or the hearing officer shall be allowed such fees and traveling expenses as are allowed in civil actions in the district court, to be paid by the party in whose interest such witnesses are subpoenaed. The board, or any member thereof, or the hearing officer, shall make such inquiries

and investigations as shall be deemed relevant. Each hearing shall be held at the county seat in any county where the dredge or other placer mining is being conducted or where any of the lands involved in the hearing are situate, or in the county of Ada, as the board may designate.

(b) If the hearing involves a permit or application for a permit, the ~~decision~~ final order of the board, ~~or the decision of the member to whom the matter may have been assigned, or the decision of the hearing officer,~~ together with the ~~transcript of the evidence, findings of fact, and any other matter pertinent to the questions arising during any hearing~~ agency record, as provided in chapter 52, title 67, Idaho Code, shall be filed in the office of the director of the department of lands. A copy of ~~such findings of fact and decision~~ the order shall be sent to the applicant or holder of the permit involved in such hearing by United States mail. ~~If the matter has been assigned for hearing by a member of the board or a hearing officer and a claim for review is not filed by any such party in the proceedings within thirty (30) days after his decision is filed, such decision may be adopted as the decision of the board, and notice thereof shall be immediately sent to the applicant or permit holder involved in such hearing by United States mail.~~

(c) ~~If a claim for review is filed, the board may hear arguments and evidence in regard to any or all matters pertinent to the decision, and may revise the decision in whole or in part, or may refer the matter back to the member or hearing officer for further findings of fact. The board shall file its decision with the records of the proceedings and notify the parties thereof.~~

~~(d)~~ Any applicant or permit holder aggrieved by any final decision or order of the board shall be entitled to judicial review in accordance with the provisions and standards set forth in ~~sections 67-5215 and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 46. That Section 47-1505, Idaho Code, be, and the same is hereby amended to read as follows:

47-1505. DUTIES AND POWERS OF BOARD. (a) In addition to the other duties and powers of the board prescribed by law, the board is granted and shall be entitled to exercise the following authority and powers and perform the following duties:

(1) To administer and enforce the provisions of this act and the rules ~~and regulations~~ and orders promulgated thereunder as provided in this act.

(2) To conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations and training in carrying out the provisions of this act. In carrying out the activities authorized by this section, the board may enter into contracts with and make grants to institutions, agencies, organizations and individuals, and shall collect and make available any information obtained therefrom.

(3) To adopt and promulgate reasonable rules ~~and regulations~~ respecting the administration of this act and such rules ~~and regulations~~ as may be necessary to carry out the intent and purposes of this act, provided that no ~~regulations~~ rules shall be adopted

which require reclamation activities in addition to those set forth in this act. All such rules ~~and regulations~~ shall be adopted in accordance with and subject to the provisions of ~~sections 67-5201 through 67-5207~~ chapter 52, title 67, Idaho Code.

(4) To enter upon affected lands at all reasonable times, for the purpose of inspection, to determine whether the provisions of this act have been complied with. Such inspections shall be conducted in the presence of the operator or his duly authorized employees or representatives, and the operator shall make such persons available for the purpose of inspections.

(5) To reclaim affected land with respect to which a bond has been forfeited, and, in the board's discretion, with the permission of the landowner, to reclaim such other land which becomes affected land.

SECTION 47. That Section 47-1513, Idaho Code, be, and the same is hereby amended to read as follows:

47-1513. OPERATOR'S FAILURE TO COMPLY -- FORFEITURE OF BOND -- PENALTIES -- RECLAMATION FUND. (a) Whenever the board determines that an operator has not complied with the provisions of this act, the board may notify the operator of such noncompliance, and may by private conference, conciliation, and persuasion, endeavor to remedy such violation. In the event of a violation referred to in subsections (d) and (e) of this section, the board may proceed without an administrative action, hearing or decision to exercise the remedies set forth in said subsections. Additionally, no administrative action, hearing or decision shall be required from the Idaho board of health and welfare prior to the board proceeding under subsections (d) and (e) of this section. In the event of the failure of any conference, conciliation and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the operator, an officer of a corporate operator, or the designated agent of the operator shall constitute service. The operator shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the board may proceed to cancel the reclamation plan and forfeit the bond in the amount necessary to reclaim affected lands. Upon request for a hearing by an operator, the board shall schedule a hearing before a hearing officer appointed by the board at a time not less than thirty (30) days after the date the operator requests a hearing. The board shall issue subpoenas at the request of the director of the department of lands and at the request of the charged operator, and the matter shall be otherwise handled and conducted in accordance with ~~sections 67-5209 through 67-5213~~ chapter 52, title 67, Idaho Code. The hearing officer shall, pursuant to said

hearing, enter an order in accordance with ~~section 67-5212~~ chapter 52, title 67, Idaho Code, which, if adverse to the operator, shall designate a time period within which corrective action should be taken. The time period designated shall be long enough to allow the operator, in the exercise of reasonable diligence, to rectify any failure to comply designated in said order. In the event that the operator takes such action as is necessary to comply with the order within the time period designated in said order, no further action shall be taken by the board to compel performance under the act.

(b) Upon request of the board, the attorney general shall institute proceedings to have the bond of an operator forfeited for the violation by the operator of an order entered pursuant to this section.

(c) The forfeiture of such bond shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this act. If the violation involves an operator that has not furnished a bond required by this act, or an operator that is not required to furnish a bond pursuant to this act, or an operator who violates this act by performing an act not included in the original approved reclamation plan, and such departure from the plan is not subsequently approved, such operator shall be subject to a civil penalty for his failure to comply with such order in the amount determined by the board to be the anticipated cost of reasonable reclamation of affected lands.

(d) Notwithstanding any other provisions of this act, the board may commence an action without bond or undertaking, in the name of the state of Idaho to enjoin any operator who is conducting operations without an approved reclamation plan required by section 47-1506, Idaho Code, or without the bond required by this act. The court, or a judge thereof at chambers, if satisfied from the complaint or by affidavits that such acts have been or are being committed, shall issue a temporary restraining order without notice or bond, enjoining the defendant, his agents, and employees from conducting such operations without said reclamation plan or bond. Upon a showing of good cause therefor, the temporary restraining order may require the defendant to perform reclamation of the mined area in conformity with sections 47-1509 and 47-1510, Idaho Code, pending final disposition of the action. The action shall then proceed as in other cases for injunctions. If it is established at trial that the defendant has operated without an approved reclamation plan or bond, the court shall enter, in addition to any other order, a decree enjoining the defendant, his agents and employees from thereafter conducting such activities or similar actions in violation of this act. The board may, in conjunction with its injunctive procedures, proceed in the same or in a separate action to recover from an operator who is conducting surface mining or exploration operations without the required plan or bond, the cost of performing the reclamation activities required by sections 47-1509 and 47-1510, Idaho Code, from any such operator who has not filed a bond to cover the cost of the reclamation required.

(e) Notwithstanding any other provision of this act, the board may, without bond or undertaking and without any administrative action, hearing or decision, commence an action in the name of the state of Idaho (1) to enjoin a permitted surface mining operation

when, under an existing approved plan, an operator violates the terms of the plan and where immediate and irreparable injury, loss or damage may result to the state and (2) to recover the penalties and to collect civil damages provided for by law.

(f) In addition to the procedures set forth in subsections (a), (d) and (e) of this section, and in addition to the civil penalty provided in subsection (c) of this section, any operator who violates any of the provisions of this act or ~~regulations~~ rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this act, shall be liable to a civil penalty of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500) for each day during which such violation continues, and in addition may be enjoined from continuing such violation. Such penalties shall be recoverable in an action brought in the name of the state of Idaho by the attorney general in the district court for the county where the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. All sums recovered shall be placed in the state treasury and credited to the surface mining reclamation fund, which is hereby created, to be used to reclaim affected lands and to administer this act.

(g) Any person who wilfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or wilfully fails, neglects, or refuses to comply with any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) or imprisonment not to exceed one (1) year or both.

(h) Any amendment to this chapter shall not affect the validity or modify the amount, terms or conditions of any bond in effect as of the effective date of such amendment.

SECTION 48. That Section 49-436, Idaho Code, be, and the same is hereby amended to read as follows:

49-436. QUARTERLY REPORTS -- MAINTAINING RECORDS -- PENALTIES -- DEPOSIT OR BOND TO SECURE PAYMENT OF FEES -- APPEAL. (1) Not later than the last day of April, and on the last day of each third calendar month thereafter, each owner of a commercial or farm vehicle having a maximum combined gross weight in excess of sixty thousand (60,000) pounds, shall file with the department a statement of the gross miles each vehicle has traveled over the highways of the state of Idaho for the preceding calendar months of the year for which that report is made. Each report shall be cumulative of all miles traveled during all calendar months in that year for which the report is made.

(2) Every owner whose fees are computed as specified in section 49-434, Idaho Code, shall maintain records and purchase documents to substantiate and justify the use of such schedule and if the owner is reporting the use fee at multiple weights, the records shall include the configuration of the combination of vehicles for all miles traveled, and shall permit the department to inspect the same upon demand. When the records are maintained outside this state by owners engaged in transportation in this state, the owner shall reimburse the

department for reasonable expenses incurred by the department in making audits of those records and accounts at the out-of-state location. The owner or the department may request that the records be presented at a place within the state designated by the department. The records must be presented by a representative of the owner familiar with the records and who is responsible for the safekeeping of the records. Every owner is required to maintain records for four (4) years from the due date of the quarterly report unless the department and the owner agree in writing to shorten or lengthen the time period. The amount of fees imposed in this chapter shall be assessed within four (4) years after the due date of the quarterly report unless the department and owner agree in writing to lengthen the time period. If an assessment has been made, such fees may be collected by a proceeding in court within a period of three (3) years after the assessment or a final order entered pursuant to subsection (9) of this section.

(3) Owners of commercial and farm vehicles using the registration fee schedules in section 49-434(1), Idaho Code, are subject to audit to determine if the proper schedule is being used. If the weight classification being used is found to be understated, the difference between the registration fees paid and the registration fees due will become due and payable. If the vehicles are found to be operating in excess of sixty thousand (60,000) pounds gross weight, the difference between the registration fees paid under section 49-434(1), Idaho Code, and the amount that would have been due under the use fee schedule in section 49-434(4) or (5), Idaho Code, will be determined and the balance due, if any, will be collected.

(4) An owner who wilfully fails to maintain records and purchase documents to substantiate and justify the mileage reported, the registration fee schedule used, or the configuration of the vehicle combination if reporting at multiple weights, shall have the registration of all vehicles registered under sections 49-434 and 49-435, Idaho Code, suspended until such time as adequate records are provided.

(5) An owner who fails to file any reports or pay any fees or penalties due is subject to suspension or revocation of their vehicle registrations. An order suspending the vehicle registrations shall be mailed to the owner upon discovery of the deficiency by the department. The suspension shall be lifted if the reports are filed and the payments due are made, along with a reinstatement fee of forty dollars ($40.00) per carrier within fifteen (15) days after receipt of the suspension order. The owner shall have the right to appeal the suspension by petitioning the department for a hearing within ten (10) days after receipt of the suspension order. If the suspension is set aside the reinstatement fee shall not be due.

(6) If the owner fails to file required reports, pay any fees or penalties due, or file an appeal within the time limit specified, the department shall revoke the registrations. No further registrations shall be permitted on the owners' vehicles until the owner complies by filing the required reports and paying the fees and penalties due, including the reinstatement fee provided in subsection (5) of this section.

(7) An owner failing to file a report or pay any fee due within the time required as specified in this section, shall in addition to the amount of the fee pay a penalty of fifteen percent (15%) of the

amount of fee determined to be due, plus one percent (1%) of the amount for each month or fraction thereof after the report was required to be filed or the fee became due, but the department may remit all or any part of the penalty if satisfied that the delay was excusable.

(8) (a) If the department finds it necessary in order to ensure the collection of any fees or penalties imposed upon an owner, it may at the time and as a condition of granting a registration or to reinstate a registration require an owner to deposit and keep on deposit with the department a sum equal to the estimated fees computed under the schedule in section 49-434, Idaho Code, for a period of not to exceed three (3) months. In determining the necessity for an applicant or owner to maintain a deposit the department shall consider the applicant or owner's financial capability and responsibility and prior experience, if any, in collecting fees or penalties from the applicant, owner or any person having a substantial interest or control, directly or indirectly, in or over the operations conducted or to be conducted under the registration.

(b) The department may accept in lieu of a deposit a bond to secure payment of sums payable by the owner. The total amount of the deposit or bond shall be determined by the department in a manner as it shall deem proper, taking into account the nature and scope of the owner's operations. The amount may be increased or reduced at any time.

(c) If an owner ceases to be registered under the provisions of this chapter, the department, upon receipt of all payments due, shall refund to the owner all deposits remaining to the owner's credit and shall release the surety on any bond given under this section.

(d) Any applicant or owner required to make a deposit to secure the payment of fees or penalties may by proper petition demand a hearing on the necessity of the deposit or the reasonableness of the amount required. A hearing shall be granted and held within ten (10) days after the demand. The decision of the director shall become final ten (10) days after service of the order upon the applicant or owner concerned. Notice shall be served personally or by certified mail addressed to the applicant or owner at his address as it appears in the records of the department. An appeal may be taken from any decision of the department as from the decision of the magistrate's division to the district court.

(9) An owner wishing to contest an assessment made by the department may within thirty (30) days from receipt of the assessment file an appeal with the department. Upon receipt of an appeal the director or his authorized representative shall schedule an informal conference between the owner and a representative of the department. The informal conference must be conducted within twenty (20) days from the date of receipt of notice of intent to appeal from the owner. The owner and the representative of the department shall reduce all conclusions, agreements and decisions to writing, if an informal conference is held, but attendance at and participation in the informal conference is at the option of the owner. If an informal conference is held, the written report of the results of that conference shall be provided to

the director within ten (10) days. If the results of the informal conference are not satisfactory to the owner, he may continue with the appeal by informing the director in writing, and the director or his authorized representative shall appoint a hearing officer to conduct a contested case hearing in accordance with chapter 52, title 67, Idaho Code. The hearing officer may subpoena witnesses and evidence and administer oaths. The hearing officer shall prepare written findings of fact and conclusions of law for the director or his authorized representative. Upon receipt of findings of fact and conclusions of law the director or his authorized representative shall issue a final order affirming, modifying or reversing the original assessment. All final orders rendered by the director or his authorized representative shall be appealable in accordance with ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 49. That Section 49-1621, Idaho Code, be, and the same is hereby amended to read as follows:

49-1621. JUDICIAL REVIEW. Any party to a hearing before the department, or any party to a hearing has the right to judicial review in the district court. Appeals shall be as provided in ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 50. That Section 54-305, Idaho Code, be, and the same is hereby amended to read as follows:

54-305. GROUNDS FOR DISCIPLINE -- ~~APPEAL~~ JUDICIAL REVIEW -- PENALTIES -- SUBSEQUENT LICENSE. 1. The board may refuse to grant, or may temporarily suspend or otherwise restrict a license to practice architecture in this state for a period not to exceed two (2) years, or may revoke a license, upon any one (1) of the following grounds:

a. The employment of any fraud or deception in applying for a license or in passing the examination required under this chapter.

b. The employment of a fraud or deceit in the practice of his profession or procuring any contract in the practice of his profession by fraudulent means.

c. A display of incompetency or recklessness in the practice of architecture resulting in a detriment to life, health, or public safety.

d. The conviction, finding of guilt, receipt of a withheld judgment or suspended sentence in this or any other state for a felony or a misdemeanor, which misdemeanor involved a violation of the provisions of this act, a willful violation of state or local building codes, or a violation of other laws relating to public health and safety and which were committed in the course of practicing architecture.

e. Affixing of his signature to, or impressing his seal upon, any plans, drawings, specifications, or other instruments of service which have not been prepared by him, or under his immediate and responsible direction, or has permitted his name to be used for the purpose of assisting any person, not a licensed architect, to evade the provisions of this chapter.

f. Receiving of rebates, commissions, grants of money or other

favors in connection with the work, without the knowledge of the party for whom he is working, or having a pecuniary interest in the performance of the contract for the work designed, planned or supervised by him without the knowledge and consent of the owner.

g. Practicing architecture contrary to the provisions and requirements of this chapter.

h. Violation of rules of conduct for architects which the board may adopt in accordance with guidelines published by the national council of architectural registration boards.

i. Practicing architecture without being licensed, in violation of licensing laws of the jurisdiction in which the practice took place.

2. Before any license shall be revoked or suspended, or the issuance thereof denied under subsection 3 of section 54-302A, Idaho Code, the holder or applicant shall be entitled to at least twenty (20) days' notice in writing of the nature of the charge against him and of the time and place of the ~~meeting~~ hearing before the board for the purpose of hearing and determining such charge. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any revocation or suspension of license shall be certified in writing by the said board and attested to with the official seal of said board affixed thereto; and such revocation or suspension of license shall be filed in the office of the bureau of occupational licenses.

3. ~~The holder of any license may within twenty (20) days after the filing of such certificate with the bureau of occupational licenses appeal from such order of revocation or suspension to the district court in the county where a copy of such license is filed, by filing with the clerk of said court a notice of appeal, together with a certified copy of the certificate of revocation or suspension and payment to said clerk a fee of five dollars ($5.00). Such appeal shall be conducted~~ Any person aggrieved by the action of the board is entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

4. Upon the finding of the existence of grounds for discipline of any person holding a license, seeking a license, or renewing a license under the provisions of this chapter, the board may impose one or more of the following penalties:

a. Suspension of the offender's license for a term to be determined by the board;

b. Revocation of the offender's license;

c. Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of architecture in a particular manner for a term to be determined by the board;

d. Refusal to renew the offender's license;

e. Placement of the offender on probation and supervision by the board for a period to be determined by the board;

f. Imposition of an administrative fine not to exceed two thousand dollars ($2,000).

5. Any person whose license has been revoked, suspended or the issuance of which has been denied by said board for cause and the order denying, revoking or suspending the same not having been revoked by a court of competent jurisdiction, may apply for a reissuance,

reinstatement or issuance of a license and the board, for reasons it may deem sufficient, may reissue, reinstate or issue the license to such person, provided, however, that it shall not take such action until the expiration of one (1) year after the date of such order.

SECTION 51. That Section 54-521, Idaho Code, be, and the same is hereby amended to read as follows:

54-521. BOARD OF BARBER EXAMINERS -- POWERS AND DUTIES -- DESIGNATION OF PERSONS TO REPORT TO BOARD. There is hereby created, and established in the department of self-governing agencies, the board of barber examiners. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest (in this chapter referred to as the board) and in addition to the powers herein elsewhere conferred, shall have the following powers and it shall be the duty of the board:

1. To conduct examinations to ascertain the qualifications and fitness of applicants for licenses hereunder and to pass upon the qualifications of all applicants for licenses.

2. To conduct hearings and proceedings in accordance with the provisions of chapter 52, title 67, Idaho Code, to revoke licenses issued under this chapter and to revoke such licenses subject to the provisions of this chapter.

3. To designate what schools of barbering within and without the state are approved schools, and from time to time, to change such designations and to keep public records thereof.

4. To prescribe rules ~~and regulations~~ in accordance with the provisions of chapter 52, title 67, Idaho Code, for a fair and wholly impartial method of examination of applicants for licenses hereunder and, subject to the provisions of chapter 52, title 67, Idaho Code, for conducting hearings for the revocation of licenses, defining the qualifications of an approved school of barbering and for the administration of this chapter in general.

Excepting the regulations of schools under section 54-507, Idaho Code, hereof, and the issuance of licenses under section 54-513, Idaho Code, none of the powers and duties specified in the foregoing subdivisions of this section, 1 to 4 inclusive, shall be exercised by the said bureau except on the action of the board of barber examiners, which board shall be composed as follows: The board of barber examiners shall be composed of the present members of the board of barber examiners as appointed by the commissioner of law enforcement. When vacancies occur on said board, the governor shall appoint new members, but not more than a total of three (3) members, each of whom shall be a registered barber, and shall have been a resident of, and lawfully practicing barbering within the state of Idaho for a period of at least five (5) years next before his appointment, and who is neither directly nor indirectly in any way connected with or interested in the barber supply business nor in any institution offering instruction in barbering. In appointing the members of such board the governor shall give consideration to the recommendations received from the Idaho state barbers association. The board and all assistants shall be compensated as provided by section 59-509(g), Idaho Code.

The regular term of office of a member of the board shall begin as

of the first Monday of July of the year in which he is appointed and shall continue for three (3) years thereafter. A member appointed to fill a vacancy occasioned otherwise than by expiration of a term shall serve the unexpired term of his predecessor.

A vacancy in membership in the board shall occur, and be declared by the governor, whenever the regular term of a member expires, or whenever a member dies, resigns, or is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act, or to cease to have the qualifications of a member, or to have acquired disqualifications of a member, or to have been absent without reasonable cause from two (2) successive meetings of the board.

The board of barber examiners shall select from its members a chairman, vice-chairman, and secretary who shall serve at the pleasure of the board.

The action and report in writing of the board so designated shall be sufficient authority upon which the bureau may act.

Whenever the board is satisfied that substantial justice has not been done, either in examination or in revocation of a license or otherwise, it may order a reexamination or rehearing of the matter.

SECTION 52. That Section 54-530, Idaho Code, be, and the same is hereby amended to read as follows:

54-530. ~~APPEALS~~ JUDICIAL REVIEW. Any person who shall feel aggrieved by an action of the board in denying, suspending or revoking his certificate of registration or license may ~~appeal therefrom to the district court of Ada County. Such appeal shall be perfected by filing with the clerk of the district court, within thirty (30) days after the action of the board of which complaint is made, a petition setting forth briefly the action complained of and wherein the petitioner has been deprived of any legal right. The petition shall constitute the complaint, and summons may be issued thereon directed to the board and served upon the chairman thereof. The pleadings thereafter shall conform to the practice in other civil proceedings. The court in its decree may sustain or reverse the action of the board and direct the board to take such further or other action as to the court may seem just and proper in the premises~~ seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 53. That Section 54-608, Idaho Code, be, and the same is hereby amended to read as follows:

54-608. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. Every license heretofore or hereafter issued to any person to practice podiatry in this state shall be subject to suspension or revocation by the board in ~~the manner and form herein set forth~~ accordance with the procedures set forth in chapter 52, title 67, Idaho Code, upon any of the following grounds:

1. Fraud or deception in procuring a license.
2. Publication or use of untruthful or improbable statements with the view of deceiving or defrauding the public or any patient.
3. Conviction of any offense involving moral turpitude.

4. Habitual intemperance in the use of ardent spirits, narcotics or stimulants.

5. Immoral, unethical, unprofessional or dishonorable conduct manifestly disqualifying the licensee from the public practice of healing the sick.

6. The violation of any of the provisions of this act or rules ~~and regulations~~ promulgated pursuant thereto.

SECTION 54. That Section 54-610, Idaho Code, be, and the same is hereby amended to read as follows:

54-610. PROCEEDINGS FOR SUSPENSION OR REVOCATION OF LICENSE. (1) Proceedings for the suspension or revocation of a license shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code. Such proceedings may be ~~taken~~ initiated upon the information and accusation of any person. All accusations must be made in writing, signed and verified by the person familiar with the facts therein charged, and three (3) copies thereof must be filed with the board. Upon receiving the accusation the board shall, either as a board or through its secretary, make a preliminary examination of all the facts and circumstances connected with such charge. Such preliminary examination and papers in connection therewith shall not constitute public records. If the accusation be deemed insufficient by the board, no further action shall be taken. Should the board deem the complaint set forth in the accusation sufficient to require formal action, the board shall make an order setting the same for hearing at a specified time and place. The board shall cause a copy of such order and a copy of the verified accusation to be served upon the licensed person accused not less than twenty (20) days prior to the day appointed in the order for said hearing. The board, the person accusing and the licensed person accused may be represented by counsel at such hearing.

(2) The board shall have the power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire, relevant to any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of books, records or papers, directed to the sheriff of any county of the state of Idaho where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, and shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. In the event of disobedience to or neglect of any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county in this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt as in the case

of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused shall have the same right of subpoena upon making application to the board therefor. ~~Should the licensed person accused fail to appear at the time and place appointed for the hearing in person or by counsel, the board may proceed to determine the facts of the accusation in his absence; or in its discretion, may deem neglect or failure to appear to constitute an admission of the truth of the facts set forth in the accusation. The board shall cause a transcript of all such proceedings to be kept by a reporter, and shall upon request, after completion thereof, furnish a copy of such transcript to the licensed person accused. After full and mature deliberation the board shall make findings of fact and shall enter the same upon the record of proceedings.~~

(3) If the board shall find that the licensed person accused has violated any of the provisions of this act, ~~the board may recommend that the license of such licensed person be revoked or suspended for such a term as may to the board appear just and proper in the circumstances. T~~the board may ~~suspend the~~ enter an order suspending his license ~~of a licensed person accused~~ for not less than thirty (30) days nor more than two (2) years. ~~Such recommendations shall be entered upon the record of proceedings. When the board has entered its findings and recommendations upon the record, and a majority of the board has signed the same, the board shall thereupon and without delay enter an order revoking or suspending the license concerned in accordance with the board's findings and recommendations.~~ A suspended license may not be reinstated during the term of the suspension except upon order of a district court reversing the board, or upon order of the board itself after hearing new or additional evidence not available at the original proceedings. A revoked license ~~so revoked~~ may not be reinstated except upon order of a district court reversing the board. ~~A license so suspended may not be reinstated during the term of suspension except upon order of a district court reversing the board, or upon order of the board itself after hearing new or additional evidence not available at the original proceedings.~~

SECTION 55. That Section 54-611, Idaho Code, be, and the same is hereby amended to read as follows:

54-611. JUDICIAL REVIEW OF PROCEEDINGS OF THE BOARD REVOKING OR SUSPENDING LICENSE. Any person whose license shall have been revoked or suspended by the board shall have the right to ~~have the proceedings of said board reviewed by the district court of the county in which the person holding the license resides. Such review shall be had, by the person whose license has been suspended or revoked filing a notice of appeal with the clerk of such court and service of such notice upon the board. Such appeal must be taken within twenty (20) days of the action of the board revoking or suspending the license. The court shall command the board to certify a copy of the complete record and transcript of proceedings in the case and all evidence in the board's records pertaining to the revocation or suspension of said license and deliver the same to the court within twenty (20) days. Jurisdiction of the court shall be limited to ascertaining whether the board has regularly pursued its authority and the findings of fact of the board in~~

~~such--cases--shall--be-conclusive-upon-the-court,-if-supported-by-substantial-evidence-in-the-record.-The--district--court--may--affirm--or reverse--the--action--of-the-board,-but-shall-not-have-power-to-modify such-action.-An-appeal-may-be-taken-by-the-board-or--by--the--licensed person--whose--license--has-been-revoked-or-suspended-in-such-cases-to the-Supreme-Court-of-Idaho-within-twenty-(20)-days--of--the--entry--of such--final--order.--The-Supreme-Court-of-Idaho-shall-thereupon-review the-proceedings-in-the-same-manner-and-subject-to-the-same-limitations as-govern-the-review-thereof-in-the-district-courts~~ judicial review of the board's action in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 56. That Section 54-707, Idaho Code, be, and the same is hereby amended to read as follows:

54-707. POWERS AND DUTIES. The board shall have the authority to:

(1) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;

(2) Establish, pursuant to the provisions of chapter 52, title 67, Idaho Code, rules ~~and-regulations~~ for the administration of the provisions of this chapter;

(3) Conduct investigations and examinations and hold hearings;

(4) Revoke or suspend licenses to practice chiropractic after providing the licensee with an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code;

(5) In any disciplinary proceeding pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have the power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records, and papers as it may desire at any hearing and, for that purpose, the board may issue a subpoena for any witnesses or subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county in the state of Idaho, where such witness resides or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid from any funds in the state treasury in the same manner as other expenses of the board are paid. The licensee accused in such proceedings shall have the same right of subpoena upon making application to the board therefor. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum, served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court of any county in this state in which this disobedience, neglect or refusal occurs, on application by the board to compel compliance with the subpoena, to issue its order directing compliance with such subpoena, and in the event of a violation of such order, to compel compliance with such order by proceedings for contempt as in the case of disobedience of the requirement of a subpoena issued from such court or for refusal to

testify therein;

(6) Seek injunctive relief prohibiting the unlawful practice of chiropractic;

(7) Make and enter into contracts in the necessary performance of its duties pursuant to this chapter;

(8) Develop and submit a proposed budget setting forth the amount necessary to perform its functions;

(9) Perform such other duties as set forth in the laws of this state;

(10) Provide such other services and perform such other functions as are necessary to fulfill its responsibilities;

(11) Adopt rules to pProvide for reasonable fees ~~through rules and regulations~~ and for administrative costs and to assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation thereof;

(12) Adopt a rule requiring continuing education as a condition of continued licensure; and

(13) Adopt rules pursuant to chapter 52, title 67, Idaho Code, to establish and operate a system of peer review for chiropractic physicians which shall include, but not be limited to, the appropriateness, quality, utilization, and cost of chiropractic services and the ethical performance of chiropractic care.

SECTION 57. That Section 54-817, Idaho Code, be, and the same is hereby amended to read as follows:

54-817. HEARINGS. No refusal to renew, or the suspension or revocation of, a certificate of registration or license shall be made until the person affected has been given an opportunity to be heard on charges preferred in accordance with the provisions of chapter 52, title 67, Idaho Code. Such charges shall be in writing, and shall be sworn to by the person making them, and shall be filed with the board.

All charges, unless dismissed as unfounded or trivial, shall be heard within four (4) months after the date on which they are received by the board.

All charges shall be heard by the board at such time and place as it shall fix, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on, or sent by registered mail to the last known address of such registrant at least twenty (20) days before the date set for the hearing. At any hearing the accused registrant shall have the right to appear personally or by counsel and to call witnesses in his own defense.

The board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, etc., in a case involving the revocation or suspension of a license or registration or the practicing or offering to practice without a license or registration. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district judge of the district in which the witness may be found, setting forth the proceedings theretofore taken and briefly stating the subject matter upon which the testimony of the witness is required; thereupon such district judge may cause an order to be issued requiring such witness to

appear before the board to testify and to produce such books, papers, and other documents as directed in the subpoena. Any person failing or refusing to obey such order shall be punished as for contempt of court.

SECTION 58. That Section 54-835, Idaho Code, be, and the same is hereby amended to read as follows:

54-835. ~~APPEALS~~ JUDICIAL REVIEW. Any person who shall feel aggrieved by any action of the board in denying, suspending, or revoking his license or certificate of registration may seek judicial review of such action in accordance with the provisions of chapter 52, title 67, Idaho Code ~~appeal therefrom to the district court of the county of their residence. Such appeal shall be perfected by filing with the clerk of the district court, within thirty (30) days after the action of the board of which complaint is made, a petition setting forth briefly the action complained of and wherein the petitioner has been deprived of any legal right. The petition shall constitute the complaint, and summons may be issued thereon directed to the board and served upon the chairman or secretary thereof. The pleadings thereafter should conform to the practice in other civil proceedings. The court in its decree may sustain or reverse the action of the board and direct such further or other action as to the court may seem just and proper in the premises.~~

SECTION 59. That Section 54-912, Idaho Code, be, and the same is hereby amended to read as follows:

54-912. BOARD OF DENTISTRY -- POWERS AND DUTIES. The board shall have the following powers and duties:

(a) To ascertain the qualifications and fitness of applicants to practice dentistry, a dental specialty or dental hygiene; to prepare, conduct and grade qualifying examinations; to issue in the name of the board a certificate of qualification to applicants found to be fit and qualified to practice dentistry or dental hygiene.

(b) To prescribe rules ~~and regulations~~ for a fair and wholly impartial method of examination of applicants to practice dentistry, a dental specialty or dental hygiene.

(c) In the event a dental school be established within the state of Idaho, or dental hygiene be taught at any school, college, institution, university or department thereof within the state of Idaho, to prescribe by rule courses of study for and instruction in dentistry and dental hygiene, the period of study, the instructional facilities, faculty and instructor requirements, and to establish standards of preliminary education requisite to admission to the school, college, university or department thereof and to require satisfactory proof of the requirement of those standards.

(d) To define by rule what shall constitute accepted and approved schools, colleges, institutions, universities or departments thereof for the teaching of dentistry or dental hygiene and to determine, accept and approve those that comply therewith.

(e) To promulgate other rules ~~and regulations~~ required by law or necessary or desirable for its enforcement and administration; to

define by regulation the terms unprofessional or flagrant immoral conduct or practices injurious to the public as the terms are used in section 54-924, Idaho Code, and to establish by ~~regulation~~ rule minimum standards of cleanliness and sanitation; to prescribe and furnish applications, certificates, licenses and other necessary forms.

(f) To inspect or cause to be inspected the offices or operating rooms of all persons licensed under this chapter.

(g) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of dentistry or dental hygiene and to conduct hearings or proceedings to revoke, suspend or otherwise condition certificates of qualification or licenses of persons practicing dentistry or dental hygiene and to revoke or suspend such licenses, provided such hearings and proceedings shall be had in conformance with the provisions of chapter 52, title 67, Idaho Code, and in lieu of revocation or suspension of licenses, to enter into and establish and enforce consent orders as authorized by ~~section--67-5209(d)~~ chapter 52, title 67, Idaho Code, which orders may include probationary terms. Final decisions of the board shall be reviewable and appealable as provided in chapter 52, title 67, Idaho Code.

(h) The board shall have power to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of witnesses and the production of books, records and papers as it may desire at any hearing before it of any matter which it has authority to investigate, and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where the witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases and shall be paid from the state board of dentistry fund in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge thereof, of any county in this state in which the disobedience, neglect or refusal occurs, upon application by the board to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or for refusal to testify. The licensed person accused in the proceedings shall have the same right of subpoena upon making application to the board.

(i) The board shall establish an office at Boise and may appoint an administrator who need not be a member of the board or a person licensed to practice dentistry or dental hygiene, and may employ other personnel as may be necessary to assist the board. The board shall prescribe the duties of the administrator and these duties shall include the preparation of all papers and records under law for the board, and shall include enforcement activities as to the board may from time to time appear advisable, and the administrator shall act

for and on behalf of the board in such manner as the board may authorize, keep records, property and equipment of the board and discharge other duties as the board may from time to time prescribe. The compensation of the administrator or other personnel shall be determined by the board and the administrator shall be bonded to the state in the time, form and manner prescribed in chapter 8, title 59, Idaho Code.

(j) To report annually to the associations on the status of the state board of dentistry account and furnish the associations a written report on all receipts and expenditures during the preceding year.

(k) The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

SECTION 60. That Section 54-1009, Idaho Code, be, and the same is hereby amended to read as follows:

54-1009. REVOCATION OR SUSPENSION OF LICENSES -- HEARINGS -- TAKING TESTIMONY. The director shall have power to revoke or suspend any license if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has wilfully violated any of the rules ~~and regulations~~ prescribed by the board, or as prescribed in this act; or has, after due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with the provisions of this act, provided, before any license shall be revoked or suspended, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said director, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall not be less than five (5) days after the service thereof~~,--provided--that-any-person-whose-license-has-been-or-shall-be revoked-or-suspended-by-the-director-shall-have-the-right-to-have--the proceedings--of--said--director-revoking-or-suspending-his-license-and all-the-evidence-therein-reviewed-on-a-writ-of-certiorari,-by-the-district-court-of-the-county-in-which-the-director-held-the-hearings-when said-license-was-revoked-or-suspended.-Said-writ-shall-be-issued,-upon the-petition-of-the-person-whose-license-shall-have--been--revoked--or suspended,--by-said-court-or-the-clerk-thereof,-either-in-term-time-or in-vacation,-provided-request-for-said-writ-is-made-within-thirty-(30) days-after-the-license-has-been-revoked-or-suspended-by-the--director. The--writ--shall--command--the--director--to-certify-to-said-court-the record-and-proceedings-and-a-complete-transcript-thereof,-and-all--the evidence--therein--pertaining--to-the-revocation-or-suspension-of-said license.-The-jurisdiction-of-said-court-shall-be-limited-to--a--review of--the-question-of-law.-The-petition-for-the-writ-of-certiorari-shall set-forth-the-rights-of-the-petitioner-and-the-injuries-complained--of by--him-and-shall-be-verified-by-him.-If-the-proceedings-of-the-director-shall-be-sustained-or-upheld-by-the-court,-its-orders,--decisions, or-judgments-revoking-or-suspending-said-license-shall-remain-and-continue--in--full--force--and--effect,-unless-upon-an-appeal-to-a-higher court-the-decision-of-the-district-court-is-reversed~~ The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the director shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

The director shall have the power to appoint, by an order in writing, ~~any--competent--person~~ a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the director shall be based on his examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of one (1) year from the date of such revocation, but not before, apply for a new license.

SECTION 61. That Section 54-1117, Idaho Code, be, and the same is hereby amended to read as follows:

54-1117. WRITTEN COMPLAINT -- PROCEDURE FOR SUSPENSION OR REVOCATION OF LICENSE. Upon a written complaint filed with the board of morticians~~,--or-any-other-person,~~ the board shall cause to be held a hearing to determine whether a license of any person issued under this act should be suspended or revoked, or the issuance or renewal thereof refused, because of a violation of any of the causes set forth in the preceding section 54-1116, Idaho Code. At least fifteen (15) days prior to the date set for such hearing, the board shall cause written notice to be sent by certified mail to the licensee or applicant at his last known address, which notice shall contain a statement of the charges made, and the date, time and place set for the hearing. ~~The board--shall--hear-the-testimony-of-witnesses,-under-oath-administered by-the-board,-and-a-stenographic-report-of-the--proceedings--shall--be taken--and--transcribed-and-kept-in-the-file-of-the-board.--The-accused applicant-or-licensee-shall-have-the-right-to-be-present-in-person--or by--counsel-at-such-hearing-and-confront-all-witnesses-and-cross-examine-them-in-connection-with-the-charges-made-against-him.~~

~~Within-ten-(10)-days-from-the-conclusion-of-the-hearing,-the-board of-morticians-shall-declare-their-written-findings-and-recommendations as-to-what-action-should-be-taken--with--regard--to--the--issuance--or renewal--of--a--license,--or-the-revocation-or-suspension-thereof,-and mail-a-copy-thereof-to-the-applicant-or--licensee--under--review.--The board-shall,-within-ten-(10)-days-from-declaring-its-findings-and-recommendations-issue-its-decision-and-action-upon-the-complaint-and-mail copies--thereof--by--certified-mail-to-the-applicant-or-licensee-under review-and-each-of-the-members-of-the-board-of-morticians~~ The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any person aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 62. That Section 54-1126, Idaho Code, be, and the same is hereby repealed.

SECTION 63. That Section 54-1220, Idaho Code, be, and the same is hereby amended to read as follows:

54-1220. DISCIPLINARY ACTION -- PROCEDURES. (1) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of the rules of professional responsibility for professional engineers, professional land surveyors and corporations

with certificate of authorization against any individual registrant or against any corporation holding a certificate of authorization. Repeated acts of negligence, incompetence, misconduct, or violations of the rules of professional responsibility may be considered as a gross act for disciplinary action. Such charges shall be in writing, and shall be sworn to by the person or persons making them and shall be filed with the executive secretary of the board. The executive secretary of the board may be the person making and filing the charges.

(2) All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within six (6) months after the date on which they shall have been preferred.

(3) The time and place for said hearing shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such individual registrant or corporation holding a certificate of authorization at least thirty (30) days before the date fixed for the hearing. ~~At any hearing, the accused individual registrant or corporation holding a certificate of authorization shall have the right to appear in person or by counsel, or both, to cross-examine witnesses in his or its defense, and to produce evidence and witnesses in his or its own defense. If the accused person or corporation fails or refuses to appear, the board may proceed to hear and determine the validity of the charges~~ The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(4) If, after such hearing, the board votes in favor of sustaining the charges, the board may, in its discretion, impose an administrative penalty, not to exceed two thousand dollars ($2,000) for deposit in the general account of the state of Idaho. In addition, the board, in its discretion, may reprimand, suspend, revoke or refuse to renew the individual's certificate of registration or a corporation's certificate of authorization. The board may also, in its discretion, require the individual to practice under the supervision of another licensee, or require the individual to successfully complete continuing education courses as may be prescribed by the board.

SECTION 64. That Section 54-1510, Idaho Code, be, and the same is hereby amended to read as follows:

54-1510. REVOCATION OF LICENSES -- GROUNDS. Every license issued under the provisions of this chapter shall be subject to suspension, revocation or other discipline upon any of the following grounds pursuant to the procedures set forth in ~~section 54-1511~~ chapter 52, title 67, Idaho Code~~, upon any of the following grounds:~~. All hearings conducted pursuant to this section, whether before the board or a hearing officer, shall be held in Ada county unless otherwise designated by the board.

1. Fraud or deception in procuring license.

2. Practicing optometry under a false or assumed name or as a representative or agent of any person, firm or corporation other than another licensed optometrist, a physician licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code, or a professional service corporation, which has been incorporated under the authority of chapter 13, title 30, Idaho Code, by persons licensed to

practice optometry under chapter 15, title 54, Idaho Code, or licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code.

3. Having been convicted or having received a withheld judgment or suspended sentence in this or any other state of a felony, a crime involving moral turpitude, or any act related to the qualifications, functions or duties of an optometrist.

4. Gross incompetency.

5. Inability to practice optometry with reasonable skill and safety by reason of:

(a) Mental illness; or

(b) Physical illness including, but not limited to, physical deterioration which adversely affects cognitive, motor or perceptive skills; or

(c) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or any other substances which impair ability; or

(d) Having a communicable, contagious or infectious disease which endangers the health of patients.

6. Failure to pay to the board or the bureau of occupational licenses annual fee and to secure renewal license, whereupon after twenty (20) days' notice by registered mail the license of such delinquent may be revoked; but the payment of such fee at or before the time of hearing, with such additional sum, not exceeding twenty-five dollars ($25.00) as may be fixed by the board of optometry, shall excuse the default.

7. Any practice or behavior of a character likely to deceive or defraud the public.

8. Obtaining of any fee or compensation by fraud, deceit or misrepresentation.

9. Employing, either directly or indirectly, any suspended or unlicensed optometrist to do optometric work.

10. Advertising the practice of optometry in a false, misleading or deceptive manner.

11. Employment or use of what are known as "cappers" or "steerers."

12. Consistently accepting referrals that violate the laws of the state of Idaho.

13. For wilfully permitting or allowing or causing a person who is not a licensed optometrist or a licensed physician or surgeon to use the optometrist's prescription or optometric finding to fit contact lenses upon a person or member of the public, or supply contact lenses directly to a member of the public.

14. For violation of any of the provisions of this act or the rules ~~and regulations~~ or code of ethics made and promulgated by the state board of optometry, as authorized in section 54-1509, Idaho Code.

15. For wilfully attempting to violate, directly or indirectly, conspiring to violate, or assisting or participating in or abetting the violation of any of the provisions of this act or the rules ~~and regulations~~ or code of ethics made, prescribed or promulgated by the state board of optometry pursuant to the authority granted in this act.

16. Having engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient.

17. Having committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude.

SECTION 65. That Section 54-1511, Idaho Code, be, and the same is hereby repealed.

SECTION 66. That Section 54-1513, Idaho Code, be, and the same is hereby amended to read as follows:

54-1513. DUTY OF PROSECUTING ATTORNEY -- DUTY OF ATTORNEY GENERAL. It shall be the duty of the prosecuting attorney of each county to prosecute all violations of this chapter constituting a violation of criminal law and it shall be the duty of the attorney general of the state of Idaho ~~to prosecute all actions under section 54-1512, Idaho Code, to prepare and prosecute complaints under section 54-1511, Idaho Code, at the request of the state board of optometry or bureau of occupational licenses and~~ to prosecute any actions brought under the provisions of section 54-1525~~4~~, Idaho Code, if requested by the state board of optometry.

~~The state board of optometry, at its discretion, may retain and appoint an attorney, to assist in the prosecution of a complaint under section 54-1511, Idaho Code, or to assist in the prosecution of an action filed under sections 54-1512 or 54-1525, Idaho Code.~~

SECTION 67. That Section 54-1518, Idaho Code, be, and the same is hereby amended to read as follows:

54-1518. BUREAU OF OCCUPATIONAL LICENSES -- POWERS AND DUTIES. The bureau of occupational licenses shall have the following powers and duties:

1. To accept applications for examinations and issue licenses to optometrists pursuant to requirements of this chapter.

2. To maintain a registry of persons licensed to practice optometry in the state of Idaho available to the members of the general public and all applicants and rejected applicants for licenses.

3. To forward complaints against a licensed optometrist to the state board of optometry for review and investigation.

4. To assist in the investigation and prosecution of complaints filed against an optometrist under section 54-1510~~1~~, Idaho Code.

5. At the discretion of the chief of the bureau and upon apparent failure or refusal of the state board of optometry to investigate or prosecute a complaint against an optometrist, to investigate the complaint and forward the report of investigation to the state board of optometry, and upon apparent failure or refusal of the state board of optometry to take further action to ~~file an action in the district court~~ initiate proceedings under section 54-1510~~20~~, Idaho Code, against an optometrist violating the terms of this act.

SECTION 68. That Section 54-1612, Idaho Code, be, and the same is hereby amended to read as follows:

54-1612. REVOCATION OR SUSPENSION OF LICENSE OR REGISTRATION, REPRIMAND, CENSURE, OR OTHER DISCIPLINE. (1) The license or registration of any person practicing or offering to practice nursing home administration, or the license of a provisional nursing home administrator, may be revoked or suspended, or such licensee may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

(a) Upon proof that such licensee is reasonably unfit to operate a nursing home.

(b) Upon proof that such licensee has wilfully or repeatedly violated any of the provisions of this act or the rules enacted in accordance with, or wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home in which he is the administrator~~;~~.

(c) Upon proof that such licensee is guilty of fraud or deceit in the practice of nursing home administration or related activities, or in his or her admission to such practice.

(2) The board, or a hearing officer designated by it shall have jurisdiction to hear all charges brought under the provisions of this section against persons licensed and registered as nursing home administrators, or licensed as provisional nursing home administrators, and upon such hearings shall determine such charges upon their merits. If the board determines that such person is guilty of the charges, the board may revoke his or her license and registration, suspend him or her from practice, or reprimand, censure, or otherwise discipline such licensee.

(3) Proceedings under this section shall be initiated by filing with the board, charges in writing and under oath. The board on its own motion may conduct an investigation and initiate charges. The procedures for notification and the hearing on such charges, unless dismissed by the board as unfounded or trivial, shall be conducted pursuant to the provisions of ~~Idaho law~~ chapter 52, title 67, Idaho Code.

SECTION 69. That Section 54-1614, Idaho Code, be, and the same is hereby amended to read as follows:

54-1614. ~~APPEAL--FROM~~ JUDICIAL REVIEW OF BOARD ~~RULINGS~~ ACTION. Anyone ~~dissatisfied with a ruling~~ aggrieved by an action of the board may ~~appeal to the district court of the county in which said applicant resides;--with--said--matter--being heard as a de novo proceeding~~ seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 70. That Section 54-1726, Idaho Code, be, and the same is hereby amended to read as follows:

54-1726. GROUNDS FOR DISCIPLINE. ~~(1)~~ The board of pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the licenses of any person, pursuant to the procedures set forth in ~~section 54-1727~~ chapter 52, title 67, Idaho Code, upon one or more of the following grounds:

(a) Unprofessional conduct as that term is defined by the rules

~~and regulations~~ of the board;

(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;

(c) Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one or more of the following:

1. Any felony;

2. Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of a licensee; or

3. Violations of the pharmacy or drug laws of this state or rules ~~and regulations~~ pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government;

(d) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license.

(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.

(f) Being found by the board to be in violation of any of the provisions of this chapter, chapter 27, title 37, Idaho Code, or rules ~~and regulations~~ adopted pursuant to either chapter.

SECTION 71. That Section 54-1727, Idaho Code, be, and the same is hereby repealed.

SECTION 72. That Section 54-1915, Idaho Code, be, and the same is hereby amended to read as follows:

54-1915. PROCEDURE FOR REVOCATION. Upon the filing with the board of a verified complaint charging a licensee with the commission of any act constituting a cause for disciplinary action within two (2) years prior to the date of filing, the board shall forthwith issue a citation directing the licensee, within ten (10) days after service of the citation upon him, to appear by filing with the board his verified answer to the complaint, showing cause, if any he has, why his license should not be suspended or revoked; provided, however, that the appearance of the licensee by the filing of an answer may be waived by the complainant with the approval of the board, in which case the board shall proceed to a hearing~~, as hereinafter provided~~. The proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

Service of the citation upon the licensee shall be fully effected by mailing a true copy of the citation, together with a true copy of the complaint, by United States registered mail in a sealed envelope with postage fully prepaid thereon, addressed to the licensee at his last address of record with the board. Service of the citation shall be complete at the time of deposit in accordance with the provisions of the ~~Code~~ Idaho Rules of Civil Procedure relating to service by mail.

Upon the filing of the answer, the board shall fix a time and

place for the hearing and give the licensee and the complainant not less than five (5) days' notice thereof. The notice may be served by mailing a true copy by United States registered mail in a sealed envelope with postage fully prepaid thereon, addressed to the licensee and to the complainant, respectively, at the last known address of each. With the notice to the complainant there shall be attached or ~~inclosed~~ enclosed a copy of the answer. If either party has appeared by counsel, the notice shall be given in like manner to counsel instead of to the party.

~~Failure--of--the--licensee--to-answer-or-to-appear-at-the-hearing, after-having-been-notified,-may-be-deemed-an-admission-by-him--of--the commission-of-the-act-or-acts-charged-in-the-complaint-and-his-license shall--thereupon--be--suspended--forthwith,-pending-any-hearing-of-the cause-which-the-board-in-its-discretion-may-order;-provided,-that--the board--may,-in-the-event-of-such-failure-to-answer-or-to-appear-at-the hearing,-suspend-or-revoke-the-license-without-further--evidence--than the-verified-complaint-in-the-case.~~

~~Upon--the--hearing-the-board-shall-hear-all-relevant-and-competent evidence-material-to-the-issues-and-may-continue-the-hearing-from-time to-time-as-in-its-judgment-may-be-necessary-or-proper.-After-the-hearing-is-concluded-and-the-matter-submitted,--the--board--shall,--within twenty--(20)--days--after--submission,-render-its-decision-in-writing, suspending-or-revoking-the-license-or-dismissing-the-complaint,-with-a brief-statement-of-the-reasons-therefor.-It-shall--give--to--the--complainant--and--the--licensee,-or-their-respective-attorneys,-notice-of the-decision,-by-mail,-in-the-same-manner-prescribed-for-the-giving-of notice-of-hearing.~~

The ~~decision~~ order entered by the board may:

(a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.

(b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

(c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the board. ~~The-decision of-the-board-suspending-or-revoking-a-license-shall-take-effect--immediately--upon--the-service-of-the-notice-of-decision-provided-that-the board-may-grant-a-stay-of-execution--of--the--decision--suspending--or revoking-a-license,-pending-the-filing-by-the-licensee-of-an-action-in the--district--court--regarding--the-decision-or-an-application-to-the board-for-a-rehearing,-as-hereinafter-provided.~~

~~The-licensee-may-within-twenty-(20)--days--after--the--service--of notice--of-the-decision-of-the-board-suspending-or-revoking-a-license, apply-for-a-rehearing-by-filing-with-the-board-his-petition-in-writing therefor.-Within-five-(5)-days-after-the-filing-of-the--petition,--the board--shall-cause-notice-thereof-to-be-served-upon-the-complainant-by mailing-a-copy-of-the-petition-for-rehearing-to-the-complainant-in-the same-manner-prescribed-for-the-notice-of-hearing.-Within--twenty--(20) days--after-the-service-of-the-notice,-the-board-shall-either-grant-or deny-the-petition.-If-the-petition-is-not-granted--within--the--twenty~~

~~day--period,-it-shall-be-deemed-denied.-In-the-order-granting-or-denying-a-rehearing,-the-board-shall-set-forth-a-statement-of-the-particular-grounds-and-reasons-for-such-action--on--the--petition--and--shall forthwith-mail-a-copy-of-the-order-to-the-parties-who-have-appeared-in support--of--or--in--opposition--to--the--petition-for-rehearing.-If-a rehearing-is-granted,-the-board-shall-vacate-the-decision--theretofore rendered--suspending--or-revoking-the-license-and-shall-set-the-matter for-further-hearing-on-due-notice-to-the-parties,-given-in-the--manner prescribed-for-the-giving-of-notice-of-an-original-hearing.-After-submission--of-the-matter-upon-rehearing,-the-board-shall-promptly-render its-decision-in-writing-and-give-notice-thereof--in--the--manner--prescribed-for-the-giving-of-notice-of-a-decision-rendered-upon-an-original-hearing.~~

SECTION 73. That Section 54-1916, Idaho Code, be, and the same is hereby amended to read as follows:

54-1916. ~~COURT~~ JUDICIAL REVIEW -- PROCEDURE. The applicant or licensee, as the case may be, shall have the right to ~~appeal--to--the district--court--of-the-third-judicial-district-of-the-state-of-Idaho, from-any-decision~~ judicial review of the action of the board ~~in~~ refusing, cancelling, revoking or suspending a license in accordance with the provisions of chapter 52, title 67, Idaho Code. ~~Such-appeal-shall be-taken-by-serving-a-written-notice-thereof-on-the-registrar-and-filing-the-same-with-the-clerk-of-said-district-court-within-twenty--(20) days--after--entry--of--record-of-the-board's-final-decision-refusing, cancelling,-revoking-or-suspending-any-license.~~

~~The-registrar-shall-prepare,-certify-and-file-with--the--clerk--of said--district--court--within--thirty--(30)-days-after-receipt-of-such notice,-true-copies-of-the-decision-appealed-from-and-of-the--application-for-license-and-of-all-documents-and-exhibits-filed-or-introduced in-connection-therewith.-The-person-appealing-from-the-decision-of-the board,--at--the--time-of-serving-notice-on-the-registrar,-shall-pay-to him-the-sum-of-twenty-cents-(20¢)-for-each-one-hundred-(100)-words--of the--transcript-of-the-records-and-proceedings-certified-by-the-registrar-to-the-reviewing-court.-The-matter-upon-appeal-shall-thereupon-be heard-de-novo-by-said-district-court,-without-a-jury,-either--in--open court--or--by--the--judge-in-chambers,-at-his-discretion,-and-shall-be heard-on-questions-of-both-law-and-fact.-The-district-court-shall-have power-to-either-modify,-affirm-or-reverse-the-action-of-the-board,-and upon-the-entry-of-the-judgment-of-said-district-court-a-certified-copy thereof-shall-be-forthwith-filed-with-the-board-and-its-decision-shall be-modified-to-conform-to-the-judgment-of-said-court.~~

Appeals may be taken from the judgment of said district court to the Supreme Court of Idaho by either party by serving written notice thereof on the adverse party and filing the same in said district court within thirty (30) days after entry of said judgment, but otherwise said appeal shall be had in the same manner that appeals are taken and records prepared on appeal in civil actions.

On any appeal to the district court by a licensee, the court may, in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than $1,000.00, guaranteeing the compliance by the licensee with specific conditions

imposed upon him by the board's decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the district court.

SECTION 74. That Section 54-2042, Idaho Code, be, and the same is hereby amended to read as follows:

54-2042. REVIEW OF REVOCATION OR SUSPENSION PROCEEDINGS. Any licensed person whose license shall be revoked or suspended by the commission pursuant to this act shall have the right to have the proceedings of the commission revoking or suspending said license reviewed by the district court of the county in which such person resides. The review shall be governed by ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 75. That Section 54-2114, Idaho Code, be, and the same is hereby amended to read as follows:

54-2114. HEARING -- PROCEDURE. A hearing shall be held no sooner than twenty (20) days after written notice to a licensed veterinarian of a complaint against that person under section 54-2113, Idaho Code, or in the case of a person whose application for license is denied, no sooner than ten (10) days after receipt by the board of a written request for hearing. Notice of the time and place of the hearing, meeting the requirements of ~~section--67-5209~~ chapter 52, title 67, Idaho Code, along with a copy of the complaint filed, shall be served on a licensee in the same manner required for original service of process in a civil suit. The applicant or licensee shall have the right to be heard in person and by counsel, the right to have subpoenaed the attendance of witnesses, and the right to cross-examine witnesses. Strict rules of evidence shall not apply. The board shall provide a stenographer to take down the testimony and shall preserve a full record of the proceeding. A transcript of the record may be purchased by any person interested in the hearing on payment to the board of the cost of preparing the transcript. The board shall notify the applicant or licensee of its decision in writing within ten (10) days after the conclusion of the hearing. The board, in all cases of suspension or revocation shall enter the fact on the register.

Any person whose license is suspended or revoked shall be deemed an unlicensed person for purposes of this chapter.

In all proceedings under this chapter, the rules of administrative procedure enacted as chapter 52, title 67, Idaho Code, shall apply.

SECTION 76. That Section 54-2115, Idaho Code, be, and the same is hereby amended to read as follows:

54-2115. JUDICIAL REVIEW. Any party aggrieved by a decision of the board may appeal the matter and obtain judicial review of the decision as permitted by ~~section 67-5215~~ chapter 52, title 67, Idaho Code, to the district court.

SECTION 77. That Section 54-2214, Idaho Code, be, and the same is hereby amended to read as follows:

54-2214. PROCEEDINGS FOR REFUSAL TO RENEW OR FOR REVOCATION OR SUSPENSION. When it is brought to the attention of the board by the written verified statement of any person that a person registered under this chapter has done any act or thing which appears to be grounds for refusal to renew or for revocation or suspension of his registration as set forth in this chapter, the board shall immediately make investigation of such person, and if it appears to the board from such investigation that such accusation is well founded, it shall without unnecessary delay transmit to that person by mail, a copy of the charges and shall fix a day not less than ten (10), nor more than thirty (30), days after said mailing for a hearing upon the matter. ~~The notice shall set the time and place where the hearing will be held. At such hearing the board will hear testimony offered in support of the charges and testimony offered on behalf of the accused person who may be represented by an attorney and upon the testimony produced at such hearing the board shall make its findings.~~ The proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. If the board or majority thereof find that the charges are sustained and that the registration of the accused person should be revoked or suspended, or that a renewal of said registration should be denied, the board shall forthwith revoke or suspend or refuse to renew the registration of such person as such findings may require, and shall mail to the accused person a copy of such finding.

SECTION 78. That Section 54-2215, Idaho Code, be, and the same is hereby amended to read as follows:

54-2215. ~~APPEALS~~ JUDICIAL REVIEW. Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a certificate of registration may ~~appeal therefrom to the district court in and for the county of Ada. Such appeal shall be perfected by filing with the clerk of the court, within thirty (30) days following the action of the board of which complaint is made, a petition setting forth briefly the action complained of and wherein the petitioner has been deprived of any legal rights. The petition shall constitute the complaint and~~ seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code. ~~a~~ A copy ~~thereof~~ of the petition for judicial review shall be served upon a member of the board and upon the legal counsel of the board or attorney general of the state of Idaho, who may represent the board, or he may appoint a special assistant to do so in any given instance. The attorney general shall be reimbursed by the board for any expenses incurred by the attorney general in representing the board. ~~The complaint shall be answered within twenty (20) days, and the pleadings and proceedings thereafter shall conform to the practice in other civil proceedings. The court may sustain or reverse the action of the board or direct the board to take such further or other action as to the court may seem just and proper in the premises.~~

SECTION 79. That Section 54-2216, Idaho Code, be, and the same is hereby repealed.

SECTION 80. That Section 54-2305, Idaho Code, be, and the same is

hereby amended to read as follows:

54-2305. BOARD OF PSYCHOLOGIST EXAMINERS -- POWERS. The board of psychologist examiners shall have the following powers:

(a) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses; and, at its option to adopt and revise rules ~~and regulations~~ requiring applicants to pass examinations relating to their qualifications as a prerequisite to the issuance of licenses.

(b) To adopt, and, from time to time, revise such rules ~~and regulations~~ in accordance with the provisions of chapter 52, title 67, Idaho Code, and not inconsistent with the law as may be necessary to carry into effect the provisions of this act. Such rules ~~and regulations~~ shall include, but need not be limited to, (1) a code of ethics for psychologists in the state consistent with the current, and as future amended, ethical standards for psychologists of the American psychological association; (2) the educational and professional qualifications of applicants for licensing under this act.

(c) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of psychologists and psychologist applicants pursuant to this act, and to conduct hearings in connection therewith.

(d) To conduct hearings upon complaints concerning violations of the provisions of and the rules ~~and regulations~~ adopted pursuant to this act and cause the prosecution and enjoinder of all such violations.

(e) The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records, and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in district courts in criminal cases, which fees and mileage shall be paid in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated. It shall be the duty of any district court in this state, on application by the board, to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of the subpoena issued from such court for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

(f) Proceedings before the board and judicial review of the action of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(~~f~~g) To authorize, by written agreement, the bureau of occupational licenses as agent to act in its interest.

(~~g~~h) To adopt a rule requiring continuing education as a condition of continued licensure.

SECTION 81. That Section 54-2412, Idaho Code, be, and the same is hereby amended to read as follows:

54-2412. PROCEEDINGS FOR REVOCATION OR SUSPENSION OF CERTIFICATE OF REGISTRATION. ~~The board shall cause a transcript of all such proceedings to be kept by a reporter and shall, upon request, after completion thereof, furnish a copy of such transcript to the person accused. After full and mature deliberation the board shall make findings of fact and shall enter the same upon the record of proceedings.~~ Proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. If the board shall find that the person accused has violated any of the provisions of this act, the certificate of such person may be revoked or suspended for such a term as may to the board appear just and proper in the circumstances. The board may order the suspension of the certificate of a person accused for not less than thirty (30) days nor more than two (2) years. Such orders shall be entered upon the record of proceedings. A certificate so revoked may not be reinstated except upon order of a district court reversing the board's order. A certificate so suspended may not be reinstated during the term of suspension except upon order of a district court reversing the board or upon order of the board itself, after hearing new or additional evidence not available at the original proceedings.

SECTION 82. That Section 54-2413, Idaho Code, be, and the same is hereby amended to read as follows:

54-2413. JUDICIAL REVIEW OF PROCEEDINGS REVOKING OR SUSPENDING CERTIFICATE OF REGISTRATION. Any revocation or suspension of a certificate shall be certified in writing by the board and attested with the official seal of the board affixed thereto, and such revocation or suspension ~~of certificate~~ shall be filed in the office of the bureau of occupational licenses. The holder of any certificate may ~~within twenty (20) days after the filing of such certificate with the bureau of occupational licenses appeal from such order of revocation to the district court in the county where the holder resides by filing with the clerk of said court a notice of appeal, together with a certified copy of the certificate of revocation and payment to said clerk a fee of five dollars ($5.00). Such case shall be tried in said court de novo the same as all other cases are tried, and in case~~ seek judicial review of the order of suspension or revocation in accordance with the provisions of chapter 52, title 67, Idaho Code. If the said order of ~~jurisdiction~~ suspension or revocation shall be reversed, a certified copy of such judgment shall be filed with the board and, thereafter, the environmental health specialist whose certificate was revoked shall have his certificate reinstated. Any person whose certificate has been revoked by said board for cause and the order revoking the same shall not thereafter be reversed by a court of competent jurisdiction, shall not be granted another certificate in the state of Idaho for a period of one (1) year after the order of revocation.

SECTION 83. That Section 54-2608, Idaho Code, be, and the same is hereby amended to read as follows:

54-2608. REVOCATION OF CERTIFICATES OF COMPETENCY -- SUSPENSION -- REFUSAL TO RENEW. The director of the department of labor and

industrial services shall have on the recommendation of the board the power to revoke, suspend or refuse to issue a renewal of any certificate of competency if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent or has a second time violated any of the rules ~~and regulations~~ prescribed by the board, or as prescribed by this act. Before the director shall refuse to grant a renewal of said certificate to any applicant or shall revoke or suspend any certificate previously granted, he shall hold a hearing giving such applicant or holder of said certificate fifteen (15) days written notice of his intended action by registered mail directed to the applicant or holder at the address given on said certificate or in the application for said certificate, stating generally the basis for his intended action; and the applicant or holder of said certificate shall have the opportunity to produce testimony in his own behalf at a time and place specified in said notice. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. If the director, after the hearing, shall refuse to grant a renewal of said certificate or shall suspend or revoke any certificate previously granted, said applicant or holder of a certificate may~~, within fifteen (15) days after~~ seek judicial review of the director's final ~~determination, have the proceedings of the director reviewed by the district court of the county wherein the applicant or holder resides or conducts his business No new or additional matter may be introduced in the district court. The review before the district court shall be heard on the record of the director as certified by him, with the review on appeal extending no further than to determine whether the director has regularly pursued his authority including a determination of whether the director, in the exercise of his discretion, had reasonable cause to refuse to grant a renewal of said certificate, or to revoke or suspend any certificate previously granted. If the proceedings of the director shall be upheld by the court, his orders or decisions revoking said certificate shall remain and continue in full force and effect, unless upon an appeal to a higher court the decision of the district court is reversed~~ order in accordance with the provisions of chapter 52, title 67, Idaho Code. Any person whose certificate has been revoked may, after the expiration of one (1) year from the date of revocation, but not before, apply for a new certificate of competency.

SECTION 84. That Section 54-2819, Idaho Code, be, and the same is hereby amended to read as follows:

54-2819. CODE OF ETHICS -- DISCIPLINARY ACTIONS AND REVOCATION OF CERTIFICATE. (1) The board shall cause to have prepared and shall adopt a code of ethics which shall be made known in writing to every registrant and applicant for registration under this act, and which shall be published in the roster provided for in section 54-2811, Idaho Code. Such publication shall constitute due notice to all registrants. The board may revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of such revisions or amendments.

The board shall have the power to suspend, refuse to renew, or revoke the certificate of registration of any registrant who is found

guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration.

(b) Any gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist.

(c) Any felony or any crime involving moral turpitude.

(2) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to ~~be~~ by the person, or persons making them and shall be filed with the secretary of the board.

(3) All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they shall have been preferred.

(4) The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such registrant, at least thirty (30) days before the date fixed for the hearing. ~~At--any--hearing,--the--accused registrant--shall--have-the-right-to-appear-personally-and/or-by-counsel,-to-cross-examine-witnesses-appearing-against-him,-and-to--produce evidence--and--witnesses--in-his-own-defense.~~ The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

If, after such a hearing, a majority of the board vote in favor of sustaining the charges, the board shall suspend, refuse to renew, or revoke the certificate of registration of such registered geologist. The board, for reasons it may deem sufficient, may reissue a certificate of registration to any person whose certificate has been revoked.

SECTION 85. That Section 54-2820, Idaho Code, be, and the same is hereby amended to read as follows:

54-2820. ~~APPEALS--FROM~~ JUDICIAL REVIEW OF BOARD ACTION ~~OF-THE BOARD~~. Any person who shall ~~feel~~ be aggrieved by any action of the board in denying, suspending, or revoking his certificate of registration may ~~appeal--therefrom-to-the-district-court-of-Ada-county.-Such appeal-shall-be-perfected-by-filing-with-the--clerk--of--the--district court,--within-thirty-(30)-days-after-the-action-of-the-board-of-which complaint-is-made,-a-petition-setting-forth-briefly--the--action--complained--of--and-wherein-the-petitioner-has-been-deprived-of-any-legal right.-The-petition-shall-constitute-the-complaint,-and-summons-may-be issued-thereon-directed-to-the-board-and-served-upon-the--chairman--or secretary--thereof.-The-pleading-thereafter-shall-conform-to-the-practice-in-other-civil-proceedings.-The-court-in-its-decree--may--sustain or--reverse--the-action-of-the-board-and-direct-the-board-to-take-such further-or-other-action-as-the-court-may-deem-just-and-proper--in--the premises~~ seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 86. That Section 54-2912, Idaho Code, be, and the same is hereby amended to read as follows:

54-2912. COMPLAINT AGAINST HEARING AID DEALER AND FITTER -- PRO-

CEDURE -- GROUNDS FOR SUSPENSION AND REVOCATION OF LICENSE. (a) Any person wishing to make a complaint against a hearing aid dealer and fitter under this chapter shall file a written complaint with the board within one (1) year from the date the person knew or should have known of the action upon which the complaint is based. If the board determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this act shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and require the hearing aid dealer and fitter complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint. The order and copy of the complaint shall be served upon the hearing aid dealer and fitter at least twenty (20) days before the date set for hearing, either personally or by registered mail sent to the hearing aid dealer's and fitter's last known address. Continuances or adjournment of the hearing date may be made if the board determines in its discretion that the hearing aid dealer and fitter has shown good cause. At the hearing the hearing aid dealer and fitter complained against may be represented by counsel. The hearing aid dealer and fitter complained against and the board shall have the right to take depositions in advance of hearing and after service of the complaint and either party may compel the attendance of witnesses by subpoenas issued by the board under its seal. Either party taking depositions shall give at least five (5) days' written notice to the other party of the time and place of such depositions, and the other party shall have the right to attend (with counsel if desired) and cross-examine. ~~Appeals from suspension or revocation may be made through~~ The proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

(b) Any person registered under this act may have his license revoked or suspended for a fixed period by the board for any of the following causes:

(1) The conviction of any felony, or a misdemeanor involving moral turpitude. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction;

(2) Procuring of license by fraud or deceit practiced upon the board;

(3) Unethical conduct;

(4) Engaging in the practice of fitting of and dealing in hearing aids under a false name or alias;

(5) Engaging in the practice of fitting of or dealing in hearing aids to a person who has not been given all necessary tests utilizing appropriate, established procedures and instrumentation in fitting of hearing aids;

(6) Engaging in the improper fitting of hearing aids;

(7) Failing to pay a valid judgment which arose out of a hearing aid sales transaction within two (2) months of the date the judgment became final;

(8) Revocation of the hearing aid dealer's and fitter's license

by another state because of fraud, deceit, professional incompetence or unethical conduct;

(9) Failing to notify the board of any change of address of a place of business within thirty (30) days of the date of such change;

(10) Failing to meet continuing education requirements as established by the board;

(11) Failing to provide refunds pursuant to the terms of the written contract entered into by the consumer and the hearing aid dealer and fitter;

(12) Failing to properly supervise any applicant holding a temporary permit under section 54-2908, Idaho Code, or any hearing aid dealer or fitter who is employed by, works on behalf of, or gives or receives consideration to the person relating to the practice of fitting of and dealing in hearing aids; and

(13) Violating any provisions of this chapter or other applicable federal or state statutes or rules including, but not limited to, the Idaho consumer protection act, relating directly or indirectly to selling, fitting, or dispensing of hearing aids.

SECTION 87. That Section 54-3004, Idaho Code, be, and the same is hereby amended to read as follows:

54-3004. DISCIPLINARY PROCEEDINGS. Upon giving at least twenty (20) days' notice of its intended action, and affording the holder of a certificate an opportunity for a hearing to be conducted under the provisions of chapter 52, title 67, Idaho Code, the board may revoke or suspend the registration of any landscape architect upon the following grounds:

(a) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this act;

(b) conviction of a felony by a court of competent jurisdiction;

(c) gross incompetency;

(d) fraud or deceit in the performance of official duties;

(e) for willful violation of any of the provisions of this act or any of the rules ~~or regulations~~ promulgated by the board under the authority of this act.

The board may reinstate any revoked or suspended certification upon such terms as it may impose.

An appeal of any order of the board suspending or revoking the registration of a landscape architect may be taken to the district court of either Ada county or the county in which the holder of the certificate resides, in accordance with ~~section 67-5215~~ chapter 52, title 67, Idaho Code.

SECTION 88. That Section 54-3114, Idaho Code, be, and the same is hereby amended to read as follows:

54-3114. ~~APPEAL~~ JUDICIAL REVIEW OF BOARD ACTION. Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a certified shorthand reporter certificate may ~~appeal therefrom to the district court in and for the county of Ada~~ seek judicial review thereof as provided in chapter 52, title

67, Idaho Code. ~~Such--appeal--shall-be-perfected-by-filing-with-the clerk-of-the-court,-within-thirty-(30)-days-following--the--action--of the-board-of-which-complaint-is-made,-a-notice-of-appeal-setting-forth briefly--the--action-complained-of-and-wherein-the-petitioner-has-been deprived-of-any-legal-rights.~~ A copy of the ~~notice-of-appeal~~ petition for judicial review shall be served upon the president or secretary of the board and upon the attorney general of the state of Idaho who shall represent the board in such appeal. ~~The-appeal--shall--be--processed--in--the--manner--of--civil-appeals-and-the-court-may-sustain-or reverse-the-action-of-the-board-or-direct-the-board-to-take--any--further-or-other-action-with-regard-to-the-appeal.~~

SECTION 89. That Section 54-3314, Idaho Code, be, and the same is hereby amended to read as follows:

54-3314. SUSPENSION OR REVOCATION OF LICENSE. (a) After providing an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, ~~T~~the board shall have the power to refuse to issue a license, suspend or revoke a license, or place a licensed person on probation for a period specified by the board and subject to such conditions as the board shall impose, or reprimand or censure a licensee for any of the following causes:

(1) Conviction, finding of guilt, receipt of a withheld judgment or suspended sentence in this or any other state of a felony or of any other crime where such crime bears a demonstrable relationship to the practice of denturitry.

(2) Incompetence or gross negligence in the practice of denturitry.

(3) Fraud or misrepresentation in the practice of denturitry.

(4) Use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of denturitry.

(5) The violation of any provision of this chapter or rules adopted thereunder.

(b) The board shall have the power to examine and inspect the place of business of any licensed denturist at a reasonable time and in a reasonable manner to assure compliance with this chapter.

(c) The board shall have the right to establish standards of conduct and practice, and the power to enforce such standards with monetary penalties and/or revocation or suspension of license.

SECTION 90. That Section 54-3321, Idaho Code, be, and the same is hereby amended to read as follows:

54-3321. JUDICIAL REVIEW OF BOARD ACTION. Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a denturist license may ~~appeal-therefrom-to-the district-court-in-the-county-in-which-he/she-is-a-resident~~ seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code. ~~Such-appeal-shall-be-perfected--by--filing--with the--clerk--of-the-court,-within-thirty-(30)-days-following-the-action of-the-board-of-which-complaint-is-made,-a-notice--of--appeal--setting

~~forth--briefly-the-action-complained-of-and-wherein-the-petitioner-has been-deprived-of-any-legal-rights.~~ A copy of the ~~notice--of--appeal~~ petition for judicial review shall be served upon the president or secretary of the board with notice to the attorney general of the state of Idaho ~~in-the-manner-of-civil-appeal,-and-the-court-may-sustain-or-reverse-the-action-of-the-board-or-direct-the--board--to--take any-further-or-other-action-with-regard-to-the-appeal.~~

SECTION 91. That Section 54-3905, Idaho Code, as added by Chapter 138, Laws of 1989, be, and the same is hereby amended to read as follows:

54-3905[54-3805]. WRITTEN COMPLAINT -- PROCEDURE FOR SUSPENSION OR REVOCATION OF LICENSE. Upon a written complaint filed with the board of cemeterians~~,-or-any-other-person,~~ the board shall cause to be held a hearing to determine whether a license of any person issued under this act should be suspended or revoked, or the issuance or renewal thereof refused, because of a violation of any of the causes set forth in section 54-3904 [54-3804], Idaho Code. At least fifteen (15) days prior to the date set for such hearing, the board shall cause written notice to be sent by certified mail to the licensee or applicant at his last known address, which notice shall contain a statement of the charges made, and the date, time and place set for hearing. ~~The-board-shall-hear-the-testimony-of-witnesses,--under--oath administered--by-the-board,-and-stenographic-report-of-the-proceedings shall-be-taken-and-transcribed-and-kept-in-the-file-of-the-board.--The accused--applicant--or--licensee-shall-have-the-right-to-be-present-in person-or-by-counsel-at-such-hearing-and-confront--all--witnesses--and cross-examine--them--in--connection-with-the-charges-made-against-him.~~ The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the board shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

~~Within-ten-(10)-days-from-the-conclusion-of-the-hearing,-the-board of--cemeterians--shall--declare-their-written-findings-and-recommendations-as-to-what-action-should-be-taken-with-regard-to-the-issuance-or renewal-of-a-license,-or-the-revocation--or--suspension--thereof,--and mail--a--copy--thereof--to-the-applicant-or-licensee-under-review.-The board-shall,-within-ten-(10)-days-from-declaring-its-findings-and-recommendations-issue-its-decision-and-action-upon-the-complaint-and-mail copies-thereof-by-certified-mail-to-the-applicant--or--licensee--under review-and-each-of-the-members-of-the-board-of-cemeterians.~~

SECTION 92. That Section 54-4213, Idaho Code, be, and the same is hereby amended to read as follows:

54-4213. REVOCATION OR SUSPENSION OF LICENSE OR REGISTRATION, REPRIMAND, CENSURE, OR OTHER DISCIPLINE. (1) The license or registration of any person practicing or offering to practice residential care facility administration, or the license of a provisional residential care facility administrator, may be revoked or suspended, or such licensee may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after

due hearing in any of the following cases:

(a) Upon proof that such licensee is reasonably unfit to operate a residential care facility;

(b) Upon proof that such licensee has willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance with, or willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home in which he is the administrator;

(c) Upon proof that such licensee is guilty of fraud or deceit in the practice of residential care facility administration or related activities, or in his or her admission to such practice.

(2) The board, or a hearing officer designated by it, shall have jurisdiction to hear all charges brought under the provisions of this section against persons licensed and registered as residential care facility administrators, or licensed as provisional residential care facility administrators, and upon such hearings shall determine such charges upon their merits. If the board determines that such person is guilty of the charges, the board may revoke his or her license and registration, suspend him or her from practice or reprimand, censure, or otherwise discipline such licensee.

(3) Proceedings under this section shall be initiated by filing with the board, charges in writing and under oath. The board on its own motion may conduct an investigation and initiate charges. The procedures for notification and the hearing on such charges, unless dismissed by the board as unfounded or trivial, shall be conducted pursuant to the provisions of ~~Idaho law~~ chapter 52, title 67, Idaho Code.

SECTION 93. That Section 54-4215, Idaho Code, be, and the same is hereby amended to read as follows:

54-4215. ~~APPEAL--FROM~~ JUDICIAL REVIEW OF BOARD ~~RULINGS~~ ACTION. Anyone ~~dissatisfied with a ruling~~ aggrieved by an action of the board may ~~appeal to the district court of the county in which said applicant resides;--with--said--matter--being heard as a de-novo proceeding~~ seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 94. That Section 56-133, Idaho Code, be, and the same is hereby amended to read as follows:

56-133. ADMINISTRATIVE REVIEW PROCESS. (a) Within thirty (30) days after a facility is notified of an action or determination it wishes to challenge, such facility shall request in writing that the director review such determination. The request shall be signed by the licensed administrator of the facility, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which such facility intends to rely to support its position shall be included with the request.

(b) After receiving a request meeting the above criteria, the director will contact the facility to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than thirty (30) days after a properly-completed request

is received, unless both parties agree in writing to a specified later date.

(c) The facility and the director shall attend the conference. In addition, representatives selected by the facility may attend and participate. The facility shall bring to the conference, or provide to the director in advance of the conference, any documentation on which the facility intends to rely to support its contentions. The part~~y~~ies shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty (30) days after the initial session, unless both parties agree in writing to a specific later date.

(d) A written decision by the director will be furnished to the facility within thirty (30) days after the conclusion of the conference.

(e) If the facility desires review of an adverse decision of the director, it shall, within ~~thirty (30)~~ twenty-eight (28) days following receipt of such decision, request a hearing in writing on the contested matter, in accordance with the provisions of ~~section 67-5209~~ chapter 52, title 67, Idaho Code.

SECTION 95. That Section 58-405, Idaho Code, be, and the same is hereby amended to read as follows:

58-405. LAND BOARD TO ACT ON APPLICATION. Upon the expiration of the time for filing protests as provided herein, the director of the department of lands shall refer all papers to the state board of land commissioners. If there be any protests from the director of the department of water resources, or any other persons, the board shall consider such protests, and such data as the director of the department of lands may furnish, together with his recommendations, and shall decide whether or not, the timber in question should be disposed of: provided, however, that the state board of land commissioners shall determine the trees or timber to be reserved on such land; provided further, however, that decisions by the state board of land commissioners to dispose of timber shall not receive judicial review pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code.

SECTION 96. That Section 59-1314, Idaho Code, be, and the same is hereby amended to read as follows:

59-1314. RULES ~~AND REGULATIONS~~ -- PROCEDURES FOR HEARINGS PRIOR TO APPEALS -- APPEALS. (1) Subject to other provisions of this chapter and pursuant to the policy and standards set out in section 59-1301, Idaho Code, the board shall have the power and authority to adopt, amend or rescind such rules ~~and regulations~~ and administrative policies as may be necessary for the proper administration of this chapter.

(2) Any person aggrieved by any otherwise final decision or inaction of the board must, before he appeals to the courts, file with the executive director of the board by mail or personally a notice for a hearing before the board. The notice of hearing shall set forth the

grounds of appeal to the board.

(3) A hearing shall be held before the board in Ada County, Idaho, at a time and place designated by the board or may be undertaken or held by or before any member(s) thereof or any hearing officer appointed by the board for that purpose. The proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. ~~The retirement board shall cause all oral testimony to be recorded and thereafter transcribed if an appeal is taken or if ordered by the board.~~ Members of the board or the hearing officer shall have power to administer oaths, to preserve and enforce order during such hearings, to issue subpoenas for and to compel the attendance and testimony of witnesses or the production of books, papers, documents and other evidence and to examine witnesses.

(4) ~~At the time and place fixed for hearing, unless continued for cause, each party shall present his evidence with respect to the issues raised in the notice of hearing.~~

~~(5)~~ Every finding, order, decision or award made by any member or hearing officer pursuant to such hearing, as confirmed or modified by the board, and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the board. The ~~report~~ recommended order of the hearing officer shall be considered by the board and the decision and order of the majority of the members shall be the decision and order of the board. Every such final decision and order rendered by the board shall be in writing and a copy thereof shall be mailed to each party to the appeal and to his attorney of record.

(6~~5~~) If any person in proceedings herein disobeys or resists any lawful order or process or misbehaves during a hearing, or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, document or other evidence, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the board shall certify the facts to the district court having jurisdiction, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if doing of the forbidden act had occurred with reference to the proceedings, or in the presence of the court.

(7~~6~~) ~~Within thirty (30) days after any final decision and order by the board has been mailed to the parties a~~Any ~~such~~ party aggrieved by a final decision and order of the board ~~thereby~~ may ~~appeal to the District Court~~ seek judicial review thereof pursuant to the provisions of chapter 52, title 67, Idaho Code. The decision or judgment of the district court shall be subject to appeal to the Supreme Court in the same manner and by the same procedure as appeals are taken and perfected to the court in civil actions at law.

SECTION 97. That Section 67-454, Idaho Code, be, and the same is hereby amended to read as follows:

67-454. SUBCOMMITTEES FOR REVIEW OF ADMINISTRATIVE RULES. For the purposes of review of proposed administrative rules pursuant to ~~sec-~~

~~tion--67-5203~~ chapter 52, title 67, Idaho Code, germane joint subcommittees are hereby authorized and created. The speaker of the house of representatives and the president pro tempore of the senate shall designate a subcommittee of each germane committee of each house for the consideration of proposed rules of the respective state agencies. The respective germane subcommittee of each house thus designated shall meet with the germane subcommittee of the other house and shall constitute the germane joint subcommittee. A subcommittee of each standing committee of each house shall be composed of the chairman of the committee, one (1) member of the majority party from the committee, appointed by the president pro tempore in the case of senate members, and by the speaker in the case of house members, and one (1) member of the minority party from the committee, appointed by the minority leader of the senate in the case of senate members, and by the minority leader of the house in the case of house members. If vacancies occur or exist in the majority party membership of the subcommittees of the senate, the president pro tempore shall appoint a replacement member; if vacancies occur or exist in the minority party membership of the subcommittees of the senate, the minority leader shall appoint a replacement member. If vacancies occur or exist in the majority party membership of the subcommittees of the house, the speaker shall appoint a replacement member; if vacancies occur or exist in the minority party membership of the subcommittees of the house, the minority leader shall appoint a replacement member. Meetings of a joint germane subcommittee shall be governed by the joint rules of the legislature; the chairmen shall sit as cochairmen.

Upon notice of intended action as provided in ~~section--67-5203~~ chapter 52, title 67, Idaho Code, and transmission of analysis from the director of the legislative council, the cochairmen shall determine whether a meeting of the subcommittee shall be held. If no meeting is to be held, each member shall be notified of this decision within fifteen (15) days of receipt of the original notice. If two (2) or more members of the subcommittee object to the decision of the cochairmen within five (5) days, a meeting of the subcommittee shall be held within ten (10) days. Upon a finding of the same objection by a majority of the members of the subcommittee of each house voting separately, an objection to a rule shall be transmitted to the agency with a concise statement of the reasons for the objection. A report of the joint subcommittee on each rule transmitted to it, including a finding that there is no objection to the rule or that an objection has been filed, shall be filed with the agency, transmitted to the membership of the germane standing committees, and submitted to the next regular session of the legislature.

SECTION 98. That Section 67-802, Idaho Code, be, and the same is hereby amended to read as follows:

67-802. OFFICE OF GOVERNOR -- DUTIES OF GOVERNOR. The office of the governor shall be composed of: the state liquor dispensary, as provided by chapter 2, title 23, Idaho Code; the military division, as provided by title 46, Idaho Code; the division of financial management; and such other divisions and units as are established or assigned by law, or created through administrative action of the gov-

ernor.

The governor shall appoint an administrator for each division, with the advice and consent of the senate. Administrators shall serve at the pleasure of the governor, and shall be exempt from the provisions of chapter 53, title 67, Idaho Code. Other subordinate staff necessary to accomplish a division's mission shall be subject to the provisions of chapter 53, title 67, Idaho Code.

The supreme executive power of the state is vested by section 5, article IV, of the constitution of the state of Idaho, in the governor, who is expressly charged with the duty of seeing that the laws are faithfully executed. In order that he may exercise a portion of the authority so vested, the governor is authorized and empowered to implement and exercise those powers and perform those duties by issuing executive orders from time to time which shall have the force and effect of law when issued in accordance with this section and within the limits imposed by the constitution and laws of this state. Such executive orders, when issued, shall be serially numbered for each calendar year and may be referred to and cited by such numerical designation and title. Each executive order issued hereunder shall be effective only after signature by the governor, attestation by and filing with the secretary of state, who shall keep a permanent register and file of such orders in the same manner as applies to acts of the legislature~~, and after publication in full in a newspaper or newspapers of general circulation in the state~~. In addition, each executive order required by chapter 52, title 67, Idaho Code, to be published in the administrative bulletin shall be filed with the administrative rules coordinator and published in the bulletin. Each such executive order issued by the governor must prescribe a date after which it shall cease to be effective, which shall be within four (4) calendar years of the effective date of such order, and if no date after which such order shall cease to be effective is contained in the order, then such order shall cease to be effective four (4) calendar years from the issuance thereof, unless renewed by subsequent executive order. The governor may modify or repeal any executive order by issuance of a new executive order. The procedures expressly set forth in this section shall be sufficient to make an executive order effective.

In addition to those powers prescribed above, and those prescribed by the constitution, the governor has the powers, and may perform the duties prescribed in this section and the following sections:

1. To supervise the official conduct of all executive and ministerial officers.

2. To see that all offices are filled, and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session.

3. To make the appointments and supply the vacancies provided by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States.

5. Whenever any suit or legal proceeding is pending in this state, or which may affect the title of this state to any property, or

which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state.

6. He may require the attorney general or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid any prosecuting attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars ($1,000) each, payable out of the state treasury, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed, or is charged with the commission of, an offense punishable with death; and also offer like rewards, not exceeding five hundred dollars ($500) each, in cases of felony, where the offense is not punishable with death.

9. To perform such duties respecting fugitives from justice as are prescribed by the penal code.

10. To issue and transmit election proclamations as prescribed by law.

11. He may require any officer to make special reports to him in writing on demand.

12. He has such other powers and may perform such other duties as are devolved upon him by any law of this state.

SECTION 99. That Section 67-904, Idaho Code, be, and the same is hereby amended to read as follows:

67-904. PUBLICATION AND DISTRIBUTION OF LAWS -- PROCEDURE -- DUTIES OF JOINT PRINTING COMMITTEE. The printing and publishing of the laws enacted and the joint memorials and resolutions passed at any session of the legislature, ~~together with all executive orders of the governor issued in the year prior to each such session,~~ and the amendments to the constitution adopted at the preceding general election, shall be contracted for, and their distribution shall be done in the following manner:

1. As soon after the convening of any session of the legislature as it can properly do so, the printing committee of the house of representatives and of the senate shall meet in joint session, and enter into a written contract for the printing in book form of the laws enacted and the joint resolutions and memorials passed at such session, and include in such book or books all amendments to the constitution adopted at the preceding general election, together with proper title pages, certificate pages, tables of amended and repealed laws and statutes, and a proper index of the contents of such volume or volumes. All general laws enacted at any session of the legislature shall be printed in a volume known as the Session Laws.

Said joint printing committee shall provide in said contract that all such session laws contracted for shall be printed and made available for distribution by the secretary of state within sixty (60) days after the last day on which the governor may sign or approve bills following adjournment of any session of the legislature which enacted or passed them or within thirty (30) days after the delivery to the printer of the proper title pages, certificate pages, tables of laws and statutes amended and repealed and a proper index of the contents

of the Session Laws, whichever date is first in time. Any such contract shall have included therein the necessary provisions for the printing and delivery of the session laws to the secretary of state, so that such session laws may be ready for delivery to officers and the public at the time as herein specified. Such contract shall also provide that in the event the session laws are not delivered by the printer or said printing company to the secretary of state for delivery as herein specified, that for each such day's failure to so deliver said volume, there shall be deducted from the contract price a sum per day for each day's delay, the exact amount to be deducted to be determined by said joint printing committee, and specified to any person, firm or corporation in the specifications on which bids for such work are made. The contract price agreed upon shall show the price the state is to pay for all volumes permanently bound, which are to be delivered for the state's use, and separately, the price for which such volumes are to be furnished to the public.

2. Upon entering into the contract as above provided, it shall be the duty of the joint printing committee to deliver to the printer to whom such contract has been let all copies of laws enacted and joint resolutions and memorials passed as the same shall be received from the legislature or governor; the joint printing committee shall cause to be prepared and delivered to such printer within thirty (30) days after the last day on which the governor may sign or approve bills following the adjournment of the session of the legislature, the proper title pages, certificate pages, tables of laws and statutes amended and repealed, and a proper index of the contents of such volume.

SECTION 100. That Section 67-2761, Idaho Code, be, and the same is hereby amended to read as follows:

67-2761. DENIAL, SUSPENSION, REVOCATION OF REGISTRATION -- GROUNDS. The director may by order deny, suspend or revoke registration of any provider:

(1) If he finds the order is in the public interest; or

(2) Any of the conditions described in section 67-2754(2)(c), Idaho Code, apply to the provider.

In addition the director may impose an administrative fine in an amount not to exceed five thousand dollars ($5,000) for each violation of the provisions of this act.

Prior to the revocation or suspension of any registration, the provider shall be given an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code. Judicial review of the final order of the director shall be governed by chapter 52, title 67, Idaho Code.

SECTION 101. That Section 67-5201, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5201. DEFINITIONS. As used in this act:

(1) "Administrative code" means the Idaho administrative code established in this chapter.

(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) "Agency action" means:

(a) the whole or part of a rule or order;

(b) the failure to issue a rule or order; or

(c) an agency's performance of, or failure to perform, any duty placed on it by law.

(4) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) "Bulletin" means the Idaho administrative bulletin established in this chapter.

(6) "Contested case" means a proceeding which results in the issuance of an order.

(7) "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

(8) "Document" means any proclamation, executive order, notice, rule or statement of policy of an agency.

(9) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.

(10) "Official text" means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.

(11) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.

(12) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(13) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(14) "Provision of law" means the whole or a part of the state or federal constitution, or of any state or federal:

(a) statute; or

(b) rule or decision of court.

(15) "Publish" means to bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law.

(16) "Rule" means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) law or policy, or

(b) the procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) declaratory rulings issued pursuant to section 67-5232, Idaho Code; or

(iii) intra-agency memoranda; or

(iv) any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(17) "Rulemaking" means the process for formulation, adoption, amendment or repeal of a rule.

SECTION 102. That Section 67-5203, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5203. PUBLICATION OF ADMINISTRATIVE BULLETIN. (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published in the bulletin. The bulletin shall be published by the administrative rules coordinator every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

(a) all proclamations and executive orders of the governor~~, except--those--that-have-no-general-applicability-or-are-effective only-against-state-agencies-or-persons-in-their-capacity-as--officers,-agents,-or-employees-thereof~~;

(b) agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and final rules, together with any explanatory material supplied by the agency;

(c) all agency documents required by law to be published in the bulletin; and

(d) any legislative documents affecting a final agency rule.

(5) The text of all documents published in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published in the bulletin.

(6) The coordinator shall provide a process for access to the contents of the bulletin and to the administrative code by electronic means.

(7) The coordinator shall provide a toll free telephone line for informational purposes.

SECTION 103. That Section 67-5204, Idaho Code, as amended by

Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5204. PUBLICATION OF ADMINISTRATIVE CODE. (1) The administrative rules coordinator shall annually publish a publication to be known as the "Idaho Administrative Code."

(2) The administrative code shall be a codification of:

(a) all proclamations and executive orders of the governor that have been published in the bulletin and have not been rescinded;

(b) the text of all final rules;

(c) any legislative documents affecting a final agency rule; and

(d) all documents required by law to be published in the administrative code.

(3) The text of all documents published in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published in the administrative code.

SECTION 104. That Section 67-5206, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5206. PROMULGATION OF RULES IMPLEMENTING ADMINISTRATIVE PROCEDURE ACT. (1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:

(a) establish a uniform numbering system applicable to rules adopted by all agencies;

(b) establish a uniform style and format applicable to rules adopted by all agencies;

(c) establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;

(d) establish a uniform indexing system for agency orders; and

(e) include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.

(2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.

(3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:

(a) the form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;

(b) procedures for the creation of a record of comments received at any oral presentation;

(c) the standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;

(d) the form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
(e) procedures to facilitate negotiated rulemaking;
(f) the form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and
(g) such other provisions as may be necessary or useful.

(4) In accordance with the ~~contested case~~ rule making requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules shall specify:
(a) form and content to be employed in giving notice of a contested case;
(b) procedures and standards required for intervention in a contested case;
(c) procedures for prehearing conferences;
(d) format for pleadings, briefs, and motions;
(e) the method by which service shall be made;
(f) procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized by other provisions of law;
(g) qualifications for persons seeking to act as a hearing officer;
(h) qualifications for persons seeking to act as a representative for parties to contested cases;
(i) procedures to facilitate informal settlement of matters;
(j) procedures for placing ex parte contacts on the record; and
(k) such other provisions as may be necessary or useful.

(5) (a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in effect on June 30, 1993, unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.
(b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances.

SECTION 105. That Section 67-5221, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:
(a) the specific statutory authority for the rulemaking;
(b) a statement in nontechnical language of the substance of the proposed rule;
(c) a concise, nontechnical explanation of the purpose of the

proposed rule;
(d) the text of the proposed rule prepared in legislative format;
(e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
(f) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
(g) the manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code; and
(h) the deadline for public comments on the proposed rule.
(2) (a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The form and content of the notice shall be substantially as follows: no typeface used shall measure less than twelve (12) points and space width shall not be less than two (2) newspaper columns:

PUBLIC NOTICE
OF INTENT TO PROPOSE OR PROMULGATE NEW
OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text of ~~an~~ all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state administrative bulletin:

Agency Name Rule Number Rule Subject
Comment Deadline Comment Address Hearing Location

Citizens of (county name) can view all issues of the administrative bulletin in the following locations in this county.

Location 1 Location 2 Location 3 Location 4

(b) ~~t~~The coordinator shall cause the notice required in paragraph (a) of this subsection to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published.

SECTION 106. That Section 67-5227, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5227. VARIANCE BETWEEN FINAL RULE AND PROPOSED RULE. An agency may adopt a final rule that varies in content from that which was originally proposed if the subject matter of the rule remains the

same, the final rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject of agency action in order for such members of the public to determine whether their interests could be affected by agency action on that subject.

SECTION 107. That Section 67-5241, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5241. INFORMAL DISPOSITION. (1) Unless prohibited by other provisions of law:

(a) an agency or a presiding officer may decline to initiate a contested case;

(b) any part of the evidence in a contested case may be received in written form if doing so will expedite the case without substantially prejudicing the interests of any party;

(c) informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement, or consent order. Informal settlement of matters is to be encouraged;

(d) the parties may stipulate as to the facts, reserving the right to appeal to a court of competent jurisdiction on issues of law.

(2) An agency or a presiding officer may request such additional information as required to decide whether to initiate or to decide a contested case as provided in subsection (1) of this section.

(3) If an agency or a presiding officer declines to initiate or decide a contested case under the provisions of this section, the agency or the officer shall furnish a brief statement of the reasons for the decision to all persons involved. This subsection does not apply to investigations or inquiries directed to or performed by law enforcement agencies defined in section 9-337(5), Idaho Code.

(4) The agency may not abdicate its responsibility for any informal disposition of a contested case. Disposition of a contested case as provided in this section is a final agency action.

SECTION 108. That Section 67-5250, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5250. INDEXING OF PRECEDENTIAL AGENCY ORDERS. (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

~~(2)~~ A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection ~~(1) of this section~~.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index

and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority.

SECTION 109. That Section 67-5252, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5252. PRESIDING OFFICER -- DISQUALIFICATION. (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, ~~is subject to disqualification~~ and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) ~~promptly~~ within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of section 59-704, Idaho Code.

(5) Where a decision is required to be rendered within fourteen (14) weeks of the date of a request for a hearing by state or federal statutes or rules and regulations, no party shall have the right to a disqualification without cause.

SECTION 110. That Section 67-5273, Idaho Code, as amended by Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5273. TIME FOR FILING PETITION FOR REVIEW. (1) A petition for judicial review of a final rule may be filed at any time, except as

limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the issuance of the order or, if reconsideration is sought, within twenty-eight (28) days after the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

SECTION 111. That Section 67-6519, Idaho Code, be, and the same is hereby amended to read as follows:

67-6519. PERMIT GRANTING PROCESS. As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for permits for which a reasonable fee may be charged. Each application for a permit required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision. The commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the permit or makes its recommendation to the governing board. Each commission or governing board shall establish by rule ~~and regulation~~ a time period within which a recommendation or decision must be made. Whenever a governing board or zoning or planning and zoning commission grants or denies a permit, it shall specify:

(a) the ordinance and standards used in evaluating the application;

(b) the reasons for approval or denial; and

(c) the actions, if any, that the applicant could take to obtain a permit.

An applicant denied a permit or aggrieved by a decision may within ~~sixty (60)~~ twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by ~~sections 67-5215(b) through (g) and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 112. That Section 67-6520, Idaho Code, be, and the same is hereby amended to read as follows:

67-6520. HEARING EXAMINERS. Hearing examiners include professionally trained or licensed staff planners, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section

67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivision, special use and variance permits and requests for zoning district boundary changes which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he shall recommend to the governing board or zoning or planning and zoning commission that the application be granted or denied and shall specify:

(a) the ordinance and standards used in evaluating the application;

(b) the reasons for recommendation; and

(c) the actions, if any, that the applicant could take to obtain a permit or zoning district boundary change in accordance with the plan.

An applicant denied a permit or aggrieved by a decision may within ~~sixty (60)~~ twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review ~~under the procedures~~ as provided by ~~sections 67-5215(b) through (g) and 67-5216~~ chapter 52, title 67, Idaho Code.

SECTION 113. That Section 67-6521, Idaho Code, be, and the same is hereby amended to read as follows:

67-6521. ACTIONS BY AFFECTED PERSONS. (a) As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.

(b) Any affected person may at any time prior to final action on a permit required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67-6512, Idaho Code; provided, however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

(1) Grant or deny a permit; or

(2) Delay such a decision for a definite period of time for further study or hearing. Each commission ~~of~~ or governing board shall establish by rule and regulation a time period within which a recommendation or decision must be made.

(d) An affected person aggrieved by a decision may within ~~sixty (60)~~ twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review ~~under the procedures~~ as provided by ~~sections 67-5215(b) through (g) and 67-5216~~ chapter 52, title 67, Idaho Code.

Approved March 26, 1993.

CHAPTER 217
(H.B. No. 336)

AN ACT

RELATING TO THE SALARIES OF JUSTICES, JUDGES AND MAGISTRATES; AMENDING SECTION 1-2222, IDAHO CODE, TO INCREASE THE BASE ANNUAL SALARIES AND THE MAXIMUM ANNUAL SALARIES FOR NONATTORNEY MAGISTRATES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 59-502, IDAHO CODE, TO INCREASE THE SALARIES OF JUSTICES AND JUDGES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-2222, Idaho Code, be, and the same is hereby amended to read as follows:

1-2222. SALARY SCHEDULE -- ATTORNEY AND NONATTORNEY MAGISTRATES. The salaries of magistrates of the district court shall be as follows:

(1) The annual salary of each magistrate who is an attorney shall be: for an attorney magistrate whose combined years of admission to practice as an attorney and years of service as a magistrate are less than ten (10) years, the annual salary shall be eighty percent (80%) of the annual salary of a district judge; for an attorney magistrate whose combined years of admission to practice as an attorney and years of service as a magistrate are more than ten (10) years but less than fifteen (15) years, the annual salary shall be eighty-five percent (85%) of the annual salary of a district judge; for an attorney magistrate whose combined years of admission to practice as an attorney and years of service as a magistrate are more than fifteen (15) years, the annual salary shall be ninety percent (90%) of the annual salary of a district judge.

(2) The following schedule is adopted as the base annual salary schedule for all nonattorney magistrates~~.~~:

STATE OF IDAHO
BASE ANNUAL SALARY SCHEDULE FOR NONATTORNEY MAGISTRATES

Pay Class	Annual Case Dispositions	Annual Salary
Nonattorney Magistrate Judge I	more than 4,500 cases	$ 28,000
Nonattorney Magistrate Judge II	3,000 to 4,500 cases	25,000
Nonattorney Magistrate Judge III	1,750 to 3,000 cases	22,000
Nonattorney Magistrate Judge IV	under 1,750 cases	18,000

Commencing on July 1, 1988, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1, 1989, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1, 1990, the amount of the base annual salary for all nonattorney magistrates shall be increased by eight percent (8%), and again commencing on July 1, 1991, the amount of the base annual salary for all nonattorney magistrates shall be increased by five percent (5%), and again commencing on July 1,

1993, the amount of the base annual salary for all nonattorney magistrates shall be increased by six percent (6%).

(3) The administrative director of the courts shall certify annually the case dispositions of each nonattorney magistrate judge and designate the salary classification for each nonattorney magistrate prior to the beginning of each fiscal year. Any increases or decreases in salary as a result of the provisions of this section shall become effective to coincide with the start of the fiscal year.

(4) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (1) of this section, receive an additional seven hundred fifty dollar ($750) longevity increment added to his base salary for each complete five (5) year period of service as a magistrate. No additional longevity increment shall be awarded after the twentieth year of service. For purposes of this subsection, magistrates who entered state service on January 11, 1971, shall receive credit for years of service as a police court judge, city court judge, justice of the peace, or probate judge.

(5) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (2) of this section, and separate and apart from the longevity increment established by subsection (4) of this section, receive an additional jurisdiction credit of thirty percent (30%) of his base salary upon being granted full statutory jurisdiction by the supreme court.

(6) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (2) of this section, separate and apart from the longevity increment established by subsection (4) of this section and separate and apart from the jurisdiction credit established by subsection (5) of this section, receive an additional jurisdiction credit of three thousand five hundred dollars ($3,500) to be added to his base salary during the fiscal year subsequent to any fiscal year in which the administrative director of the courts certifies that the nonattorney magistrate has disposed within a one (1) year period of over two hundred twenty-five (225) cases filed under section 18-8004, Idaho Code, and charging a defendant with being under the influence of intoxicating beverages or drugs or any other intoxicating substance.

(7) Regardless of any other provision of this section, until June 30, 1988, no nonattorney magistrate shall receive an annual salary of more than thirty-five thousand five hundred dollars ($35,500); provided, however, that commencing on July 1, 1988, the amount of the maximum salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1989, the amount of the maximum salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1990, the amount of the maximum salary limitation in this section shall be increased by eight percent (8%), and again commencing on July 1, 1991, the amount of the salary limitation in this section shall be increased by five percent (5%), and again commencing on July 1, 1993, the amount of the salary limitation in this section shall be increased by six percent (6%).

(8) All nonattorney magistrates are full-time state officers, are required to be available on a twenty-four (24) hour basis to perform duties incident to their office such as the issuance of search and arrest warrants, and are required to hold such office hours as may be

necessary to conduct court business or as required by the supreme court.

SECTION 2. That Section 59-502, Idaho Code, be, and the same is hereby amended to read as follows:

59-502. SALARIES OF JUDGES. Commencing on July 1, 1985, and until June 30, 1986, the salary of the justices of the supreme court shall be fifty-four thousand seven hundred and seventy dollars ($54,770) per annum, and the salary of the judges of the district courts shall be fifty-one thousand seven hundred and twenty dollars ($51,720) per annum. Commencing on July 1, 1986, the salary of justices of the supreme court shall be fifty-nine thousand seven hundred fifty dollars ($59,750) per annum, and the salary of judges of the district court shall be fifty-six thousand dollars ($56,000) per annum; provided, however, that commencing on July 1, 1988, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1989, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1990, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by eight percent (8%), and again commencing on July 1, 1991, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by five percent (5%), and again commencing on July 1, 1993, the salary of justices of the supreme court and the salary of judges of the district courts shall be increased by six percent (6%). Salaries of magistrates shall be as prescribed by chapter 22, title 1, Idaho Code. Salaries shall be paid on regular pay periods not less frequently than monthly as determined by order of the supreme court as due out of the state treasury, but no justice of the supreme court or judge of the district court or magistrate shall be paid his salary, or any part thereof, unless he shall first take and subscribe an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his consideration and determination thirty (30) days prior to his taking and subscribing said oath.

Approved March 26, 1993.

CHAPTER 218
(H.B. No. 341)

AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-336, IDAHO CODE, TO PROVIDE ADDITIONAL AUTHORITIES OF PUBLIC UTILITIES THAT ARE ELECTRICAL OR NATURAL GAS CORPORATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-336, Idaho Code, and to read as follows:

61-336. ADDITIONAL AUTHORITIES OF ELECTRICAL OR NATURAL GAS CORPORATIONS. The commission may authorize any public utility that is an electrical or natural gas corporation to file and place into effect schedules establishing rates or charges for energy conservation measures, services or payments provided to individual property owners or customers. Application of the schedule shall be subject to agreement between the public utility and the property owner or customer receiving service at the time the conservation measures, services or payments are initially provided. The schedule may include provisions for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made. The public utility shall record a notice of the payment obligation with the county recorder in the county where the property is located. The commission may prescribe by rule other methods by which the public utility shall notify property owners or customers of any such payment obligation.

Approved March 26, 1993.

CHAPTER 219
(H.B. No. 350, As Amended)

AN ACT

RELATING TO THE TELECOMMUNICATIONS UNIVERSAL SERVICE FUND; AMENDING SECTION 62-610, IDAHO CODE, TO REDUCE THE RATIO OF A TELEPHONE CORPORATION'S CHARGES FOR INTEREXCHANGE ACCESS SERVICE TO THE STATEWIDE AVERAGE CHARGE FOR INTEREXCHANGE ACCESS SERVICE IN ORDER TO MAINTAIN THE ELIGIBILITY OF THE TELEPHONE CORPORATION FOR PARTICIPATION IN THE IDAHO UNIVERSAL SERVICE FUND, AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 62-610, Idaho Code, be, and the same is hereby amended to read as follows:

62-610. UNIVERSAL SERVICE FUND. (1) The commission shall establish a universal service fund (USF) for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable prices throughout the state of Idaho.

(2) The USF shall be funded by imposing a statewide end user surcharge on local exchange service and MTS and WATS type services.

(a) The local exchange surcharge shall be a cents per line charge

with a business-residential differential equal to the statewide average business-residential price ratio. Providers of local exchange service shall remit the local exchange surcharge revenues to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(b) The MTS and WATS surcharge shall be recovered on a percentage basis through a surcharge applied to the monthly bill of each end user or by a cents per minute charge applied to the bills of all end users. Providers of MTS or WATS services shall remit the revenues derived from such surcharge to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(c) The surcharges set forth in paragraphs (a) and (b) of this subsection shall be collected by all telephone corporations, including telephone corporations subject to the provisions of this chapter and mutual nonprofit and cooperative telephone corporations, providing the services upon which the surcharge is levied.

(3) Telephone corporations ~~which~~ that provide local exchange service and access service for MTS/WATS providers and ~~which~~ that have rates for these respective services ~~which~~ that meet both of the following criteria shall be eligible for distributions from the USF:

(a) The telephone corporation's average residence and business local exchange service rates for one-party single line service are in excess of one hundred and twenty-five percent (125%) of the weighted statewide average rates for residence and business local exchange service rates for one-party single line service respectively, and

(b) The telephone corporation's average per minute charge for MTS/WATS access services it provides is in excess of one hundred ~~and twenty-five~~ percent (1~~2~~500%) of the weighted statewide average for the same or similar MTS/WATS access services.

(4) Distributions from the fund shall be available to the individual telephone corporations in Idaho providing basic local exchange service to meet residual revenue requirements remaining after deducting the revenue generated by all intrastate telecommunication services, from the telephone corporation's total intrastate telecommunication service revenue requirement as determined by the commission, including local exchange ~~and MTS/WATS access services~~ priced at one hundred ~~and~~ twenty-five percent (125%) or more of the weighted statewide average and MTS/WATS access services priced at one hundred percent (100%) or more of the statewide average and contributions from the federal universal service fund. The commission shall provide, by order, for not less than seventy-five percent (75%) nor more than one hundred percent (100%) of the residual revenue requirement of the individual telephone corporation to be funded by the universal service fund. The commission shall retain its authority to approve rate design consistent with this subsection, but notwithstanding such authority, the commission shall supply full funding for any commission determined revenue requirement. Distributions from the fund shall be made monthly.

(5) The commission shall:

(a) Adopt rules for the implementation and administration of the universal service fund established in this section~~.~~;

(b) Determine which telephone corporations meet the eligibility standards;

(c) Provide for the receipt and collection of the surcharge for the universal service fund; and

(d) Provide for the administration and distribution of the fund to telephone corporations in a manner determined by the commission.

(6) "Local Exchange Service," as used in section 62-6109, Idaho Code, means the provision of access lines to customers with the associated transmission of two-way interactive switched voice communication within a local exchange area.

Approved March 26, 1993.

CHAPTER 220
(H.B. No. 354, As Amended in the Senate)

AN ACT

RELATING TO NONPROFIT CORPORATIONS; REPEALING CHAPTER 3, TITLE 30, IDAHO CODE; AMENDING TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW PART 1, CHAPTER 3, TITLE 30, IDAHO CODE, PROVIDING A SHORT TITLE, PROVIDING FILING REQUIREMENTS, PROVIDING FOR FORMS, PROVIDING FOR FILING, SERVICE AND COPYING FEES, PROVIDING FOR AN EFFECTIVE DATE FOR DOCUMENTS, PROVIDING FOR CORRECTION OF FILED DOCUMENTS, PROVIDING THE FILING DUTY OF THE SECRETARY OF STATE, PROVIDING FOR AN APPEAL FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT, PROVIDING FOR THE EVIDENTIARY EFFECT OF A COPY OF A FILE DOCUMENT, PROVIDING FOR CERTIFICATES OF EXISTENCE, PROVIDING DEFINITIONS, PROVIDING NOTICE REQUIREMENTS, PROVIDING FOR LIMITATIONS ON PRIVATE FOUNDATIONS, PROVIDING FOR JUDICIAL RELIEF, PROVIDING FOR CONSTITUTIONAL PROTECTIONS FOR RELIGIOUS CORPORATIONS, DEFINING INCORPORATORS, PROVIDING FOR ARTICLES OF INCORPORATION, PROVIDING FOR AN EFFECTIVE DATE FOR INCORPORATION, PROVIDING FOR LIABILITY FOR PREINCORPORATION TRANSACTIONS, PROVIDING FOR THE ORGANIZATION OF A CORPORATION, PROVIDING FOR BYLAWS, PROVIDING FOR EMERGENCY BYLAWS AND POWERS, PROVIDING FOR CORPORATE PURPOSES, PROVIDING FOR GENERAL POWERS, PROVIDING FOR EMERGENCY POWERS, PROVIDING FOR A LIMITATION ON THE DEFENSE OF ULTRA VIRES, PROVIDING FOR CORPORATE NAMES, PROVIDING FOR RESERVED NAMES AND REGISTERED NAMES, PROVIDING FOR A REGISTERED OFFICE AND REGISTERED AGENT, PROVIDING FOR A CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, PROVIDING FOR THE RESIGNATION OF A REGISTERED AGENT, PROVIDING FOR THE SERVICE OF PROCESS ON CORPORATIONS, PROVIDING FOR THE ADMISSION OF MEMBERS AND THE CONSIDERATION FOR MEMBERSHIPS, PROVIDING FOR MEMBERSHIP REQUIREMENTS, PROVIDING FOR DIFFERENCES IN RIGHTS AND OBLIGATIONS OF MEMBERS, PROVIDING FOR TRANSFERS OF MEMBERSHIPS, PROVIDING FOR A LIMITATION ON MEMBER'S LIABILITY TO THIRD PARTIES, PROVIDING FOR MEMBER'S LIABILITY FOR DUES, ASSESSMENTS AND FEES, PROVIDING FOR THE RESIGNATION, TERMINATION, EXPULSION AND SUSPENSION OF MEMBERS, PROVIDING FOR THE PURCHASE OF MEMBERSHIPS, PROVIDING FOR DERIVATIVE SUITS, PROVIDING FOR DELEGATES,

PROVIDING FOR ANNUAL AND REGULAR MEETINGS, PROVIDING FOR SPECIAL MEETINGS, PROVIDING FOR COURT-ORDERED MEETINGS, PROVIDING FOR ACTION BY WRITTEN CONSENT, PROVIDING FOR NOTICE OF MEETINGS, PROVIDING FOR WAIVER OF NOTICE AND A RECORD DATE FOR MEETINGS, PROVIDING FOR ACTION BY MAILED WRITTEN BALLOT OR ABSENTEE BALLOT, PROVIDING FOR A MEMBERS' LIST FOR MEETINGS, PROVIDING FOR VOTING ENTITLEMENT FOR MEMBERS, PROVIDING FOR QUORUM REQUIREMENTS, PROVIDING FOR VOTING REQUIREMENTS AND PROXIES, PROVIDING FOR CUMULATIVE VOTING FOR DIRECTORS AND OTHER METHODS OF ELECTING DIRECTORS, PROVIDING FOR CORPORATION'S ACCEPTANCE OF VOTES, PROVIDING FOR VOTING AGREEMENTS, PROVIDING FOR A BOARD OF DIRECTORS AND THE QUALIFICATIONS OF DIRECTORS, PROVIDING FOR THE NUMBER OF DIRECTORS AND THEIR ELECTION, DESIGNATION OR APPOINTMENT, PROVIDING FOR TERMS OF DIRECTORS, PROVIDING FOR THE RESIGNATION AND REMOVAL OF DIRECTORS, PROVIDING FOR THE FILLING OF VACANCIES ON THE BOARD OF DIRECTORS AND THE COMPENSATION OF DIRECTORS, PROVIDING FOR REGULAR AND SPECIAL MEETINGS OF DIRECTORS, ACTION BY DIRECTORS WITHOUT A MEETING AND FOR A CALL AND NOTICE OF MEETINGS, PROVIDING FOR THE WAIVER OF NOTICE, QUORUM AND VOTING REQUIREMENTS, PROVIDING FOR COMMITTEES OF THE BOARD OF DIRECTORS, PROVIDING GENERAL STANDARDS FOR DIRECTORS, DEFINING CONFLICTS OF INTEREST OF DIRECTORS, PLACING LIMITS ON LOANS TO OR GUARANTIES FOR DIRECTORS AND OFFICERS, PROVIDING FOR REQUIRED OFFICERS AND THEIR DUTIES AND AUTHORITY, PROVIDING STANDARDS OF CONDUCT FOR OFFICERS, PROVIDING FOR THE RESIGNATION AND REMOVAL OF OFFICERS, PROVIDING OFFICERS AUTHORITY TO EXECUTE DOCUMENTS, PROVIDING FOR INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, GRANTING AUTHORITY TO AMEND ARTICLES OF INCORPORATION, PROVIDING FOR AMENDMENT OF ARTICLES OF INCORPORATION BY DIRECTORS AND MEMBERS, PROVIDING FOR CLASS VOTING BY MEMBERS ON AMENDMENTS TO ARTICLES OF INCORPORATION, PROVIDING FOR ARTICLES OF AMENDMENT AND RESTATED ARTICLES OF INCORPORATION, PROVIDING FOR THE EFFECT OF AMENDMENTS AND RESTATEMENTS OF ARTICLES OF INCORPORATION, PROVIDING FOR THE AMENDMENT OF BYLAWS BY DIRECTORS AND MEMBERS, PROVIDING FOR CLASS VOTING BY MEMBERS ON AMENDMENTS TO BYLAWS, PROVIDING FOR THE APPROVAL BY THIRD PERSONS OF AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS, PROVIDING FOR THE APPROVAL OF MERGERS AND FOR THE ACTION ON PLANS OF MERGERS BY THE BOARD OF DIRECTORS, MEMBERS AND THIRD PERSONS, PROVIDING FOR ARTICLES OF MERGER AND THE EFFECT OF MERGERS, PROVIDING FOR MERGERS WITH FOREIGN CORPORATIONS, PROVIDING FOR THE EFFECT OF MERGERS ON BEQUESTS, DEVISES AND GIFTS, PROVIDING FOR THE SALE OF ASSETS IN THE REGULAR COURSE OF A CORPORATION'S ACTIVITIES AND FOR THE MORTGAGE OF ASSETS, PROVIDING FOR THE SALE OF ASSETS OTHER THAN IN THE REGULAR COURSE OF ACTIVITIES, PROHIBITING CERTAIN CORPORATE DISTRIBUTIONS AND AUTHORIZING CERTAIN CORPORATE DISTRIBUTIONS, PROVIDING FOR DISSOLUTION BY INCORPORATORS, DIRECTORS, MEMBERS AND THIRD PERSONS, PROVIDING FOR ARTICLES OF DISSOLUTION AND THE EFFECT OF DISSOLUTION, PROVIDING FOR KNOWN AND UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATIONS, PROVIDING FOR AUTHORITY TO TRANSACT BUSINESS BY A FOREIGN CORPORATION AND THE CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY, PROVIDING FOR APPLICATIONS OF FOREIGN CORPORATIONS FOR CERTIFICATES OF AUTHORITY, PROVIDING FOR AMENDED FOREIGN CORPORATION CERTIFICATES OF AUTHORITY, PROVID-

ING FOR THE EFFECT OF THE ISSUANCE OF A CERTIFICATE OF AUTHORITY TO A FOREIGN CORPORATION, PROVIDING FOR THE CORPORATE NAME, REGISTERED OFFICE AND REGISTERED AGENT AND CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF A FOREIGN CORPORATION, PROVIDING FOR THE RESIGNATION OF A REGISTERED AGENT OF A FOREIGN CORPORATION, PROVIDING FOR SERVICE ON A FOREIGN CORPORATION AND FOR WITHDRAWAL OF A FOREIGN CORPORATION, PROVIDING GROUNDS FOR REVOCATION OF A CERTIFICATE OF AUTHORITY OF A FOREIGN CORPORATION, PROVIDING A PROCEDURE AND FOR THE EFFECT OF THE REVOCATION OF A CERTIFICATE OF AUTHORITY OF A FOREIGN CORPORATION, PROVIDING AN APPEAL FROM THE REVOCATION OF A CERTIFICATE OF AUTHORITY OF A FOREIGN CORPORATION, PROVIDING FOR REQUIRED CORPORATE RECORDS, PROVIDING FOR THE INSPECTION OF RECORDS BY MEMBERS, PROVIDING FOR THE SCOPE OF RECORDS AND INSPECTION RIGHTS, PROVIDING FOR LIMITATIONS ON THE USE OF MEMBERSHIP LISTS, REQUIRING FINANCIAL STATEMENTS FOR MEMBERS, REQUIRING A REPORT OF INDEMNIFICATION TO MEMBERS, REQUIRING AN ANNUAL REPORT TO THE SECRETARY OF STATE, PROVIDING FOR FORFEITURE OF CORPORATIONS, PROVIDING CONSEQUENCES OF FORFEITURE, PROVIDING FOR TRUSTEES FOR FORFEITED CORPORATIONS AND CONTINUATION OF ACTIONS, PROVIDING FOR REINSTATEMENT OF CORPORATIONS, PROVIDING FOR DISSOLUTION OF CORPORATIONS TEN YEARS AFTER FORFEITURE, PROVIDING FOR THE APPLICATION OF THIS ACT TO EXISTING DOMESTIC CORPORATIONS AND TO QUALIFIED FOREIGN CORPORATIONS, PROVIDING SAVING PROVISIONS, AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 3, Title 30, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Part 1, Chapter 3, Title 30, Idaho Code, and to read as follows:

CHAPTER 3
IDAHO NONPROFIT CORPORATION ACT

30-3-1. SHORT TITLE. This act shall be known and may be cited as the "Idaho Nonprofit Corporation Act."

30-3-2. FILING REQUIREMENTS. (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(2) This act must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this act. It may contain other information as well.

(4) The document must be typewritten or printed.

(5) The document must be in the English language. However, a corporate name need not be in English if written in English letters or arabic or roman numerals, and the certificate of existence required of

foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed:

(a) By the presiding officer of its board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(7) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(a) The corporate seal;

(b) An attestation by the secretary or an assistant secretary; or

(c) An acknowledgement, verification or proof.

(2) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one (1) exact or conformed copy, except as provided in sections 30-3-32 and 30-3-124, Idaho Code, the correct filing fee, and any penalty required by this act or other law.

30-3-3. FORMS. (1) The secretary of state may prescribe, and furnish on request, forms for:

(a) A foreign corporation's application for a certificate of authority to transact business in this state;

(b) A foreign corporation's application for a certificate of withdrawal; and

(c) The annual report.

If the secretary of state so requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this act but their use is not mandatory.

30-3-4. FILING, SERVICE AND COPYING FEES. The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

(1) Articles of incorporation.....$30.00

(2) Application for use of indistinguishable name.....$20.00

(3) Application for reserved name.....$20.00

(4) Notice of transfer of reserved name.....$20.00

(5) Application for registered name.....$30.00

(6) Application for renewal of registered name.....$30.00

(7) Corporation's statement of change of registered agent or registered office or both.....no fee

(8) Agent's statement of change of registered office for each affected corporation.....no fee

(9) Agent's statement of resignation.....no fee

(10) Amendment of articles of incorporation.....$30.00

(11) Restatement of articles of incorporation

with amendments.....$30.00
(12) Articles of merger.....$30.00
(13) Articles of dissolution.....$30.00
(14) Certificate of reinstatement.....$10.00
(15) Application for certificate of authority.....$30.00
(16) Application for amended certificate of authority.....$30.00
(17) Application for certificate of withdrawal.....$20.00
(18) Certificate of revocation of authority to transact business.....no fee
(19) Annual report.....no fee
(20) Articles of correction.....$20.00
(21) Certificate of existence or authorization.....$10.00
(22) Any other document required or permitted to be filed by this act.....$20.00

30-3-5. EFFECTIVE DATE OF DOCUMENT. (1) Except as provided in subsection (2) of this section, a document is effective:

(a) At the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document; or

(b) At a later time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date filed.

30-3-6. CORRECTING FILED DOCUMENT. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(a) Contains an incorrect statement; or

(b) Was defectively executed, attested, sealed, verified or acknowledged.

(2) A document is corrected:

(a) By preparing articles of correction that:

(i) Describe the document (including its filing date) or attach a copy of it to the articles;

(ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) Correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the secretary of state.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

30-3-7. FILING DUTY OF SECRETARY OF STATE. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 30-3-2, Idaho Code, the secretary of state shall file it.

(2) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's official title and the date and the time of receipt, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, except as provided in sections 30-3-32 and 30-3-125, Idaho Code, the secretary of state shall deliver the document copy, with the filing fee receipt, (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

(3) Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(a) Affect the validity or invalidity of the document in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

30-3-8. APPEAL FROM SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT. (1) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court in the county where the corporation's principal office, or if there is none in this state, its registered office, is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

30-3-9. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT. A certificate attached to a copy of a document bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

30-3-10. CERTIFICATE OF EXISTENCE. (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(2) Subject to any qualification stated in the certificate, a

certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

30-3-11. DEFINITIONS. Unless the context otherwise requires in this act:

(1) "Approved by (or approval by) the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum, or by a written ballot or written consent in conformity with this act or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws of this act for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

(3) "Board" or "board of directors" means the board of directors by whatever name it is designated, except that no person or group of persons are the board of directors merely because of powers delegated to that person or group pursuant to section 30-3-63, Idaho Code.

(4) "Bylaws" mean the code or codes of rules, other than the articles, adopted pursuant to this act for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(5) "Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

(6) "Cooperative corporation" or "cooperative" means any nonprofit corporation, operating on a cooperative basis, owned, operated, organized and maintained by its members, for the purpose of providing goods or services to its members.

(7) "Delegates" mean those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Directors" mean individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

(9) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers.

(10) "Domestic corporation" means a corporation organized under the laws of Idaho.

(11) "Effective date of notice" is defined in section 30-3-12, Idaho Code.

(12) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(13) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust and two (2) or more persons having a joint

or common economic interest; and state, United States; and foreign government.

(14) "File," "filed," or "filing" means filed in the office of the secretary of state.

(15) "Foreign corporation" means a corporation organized under a law other than the laws of this state which would be a nonprofit corporation if formed under the laws of this state.

(16) "Governmental subdivision" includes authority, county, district and municipality.

(17) "Includes" denotes a partial definition.

(18) "Individual" includes the estate of an incompetent individual.

(19) "Means" denotes a complete definition.

(20) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and this act.

(21) "Notice" is defined in section 30-3-12, Idaho Code.

(22) "Person" includes any individual or entity.

(23) "Principal office" means the office, in or out of this state, so designated in the annual report filed pursuant to section 30-3-136, Idaho Code, where the principal office of a domestic or foreign corporation is located.

(24) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(25) "Record date" means the date on which a corporation determines the identity of its members for the purposes of this act.

(26) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 30-3-83(2), Idaho Code, for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(27) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory, and insular possession, and their agencies and governmental subdivisions, of the United States.

(28) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(29) "Vote" includes authorization by written ballot, absentee ballot and written consent.

(30) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

30-3-12. NOTICE. (1) Notice may be oral or written.

(2) Notice may be communicated: in person; by telephone; by telegraph, teletype or other form of wire or wireless communication; or by mail or private carrier; if these forms of personal notice are impracticable, notice may be communicated by publication for ten (10) days pursuant to section 60-109, Idaho Code.

(3) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(4) Written notice, if in a comprehensible form, is effective at the earliest or the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, as evidenced by sworn affidavit or postmark, if mailed correctly addressed and with first class postage affixed;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(5) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(6) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

(7) Written notice is correctly addressed to a domestic or foreign corporation authorized to transact business in this state, other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(8) If section 30-3-50(2), Idaho Code, or any other provision of this act prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this act, those requirements govern.

30-3-13. PRIVATE FOUNDATION. Except where otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the internal revenue code of 1986:

(1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the code.

(2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the code.

(3) Shall not retain any excess business holdings as defined in section 4943(c) of the code.

(4) Shall not make any taxable expenditures as defined in section 4944 of the code.

(5) Shall not make any taxable expenditures as defined in section 4945(d) of the code.

All references in this section to sections of the code shall be to such sections of the internal revenue code of 1986 as amended from time to time, or to corresponding provisions of subsequent internal

revenue laws of the United States.

30-3-14. JUDICIAL RELIEF. (1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or this act, then upon petition of a director, officer, delegate, or member, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this act, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirements relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this act.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws and this act.

30-3-15. RELIGIOUS CORPORATIONS -- CONSTITUTIONAL PROTECTIONS. If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this act on the same subject, the religious doctrine shall control to the extent required by the constitution of the United States or the constitution of this state or both.

30-3-16. INCORPORATORS. One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

30-3-17. ARTICLES OF INCORPORATION. (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of section 30-3-27, Idaho Code;

(b) The purpose or purposes for which the corporation is orga-

nized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(c) The names and addresses of the individuals who are to serve as the initial directors;

(d) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(e) The name and address of each incorporator;

(f) Whether or not the corporation will have members; and

(g) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting and regulating the powers of the corporation, its board of directors, and members or any class of members; and

(iii) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(b) Any provision that under this act is required or permitted to be set forth in the bylaws.

(3) Each incorporator named in the articles must sign the articles.

(4) The articles of incorporation need not set forth any of the corporation powers enumerated in this act.

30-3-18. INCORPORATION. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

30-3-19. LIABILITY FOR PREINCORPORATION TRANSACTIONS. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this act, are jointly and severally liable for all liabilities created while so acting.

30-3-20. ORGANIZATION OF CORPORATION. (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the incorporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state in accordance with section 30-3-75, Idaho Code.

30-3-21. BYLAWS. (1) The board of directors or members of a corporation shall adopt the initial bylaws for the corporation.

(2) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

(3) The patrons of a cooperative corporation, by dealing with the corporation, acknowledge that the terms and provisions of the articles of incorporation and bylaws, as well as policies, rules and regulations, shall constitute and be a contract between the corporation and each patron, and both the corporation and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions.

30-3-22. EMERGENCY BYLAWS AND POWERS. (1) Unless the articles provide otherwise, the directors of a corporation may adopt, amend or repeal bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(a) How to call a meeting of the board;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

30-3-23. PURPOSES. (1) Every corporation incorporated under this act has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this act only if incorporation under this act is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

30-3-24. GENERAL POWERS. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;

(3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(4) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in or obligations of any entity;

(7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 30-3-82, Idaho Code;

(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its activities, locate offices and exercise the powers granted by this act within or without this state;

(11) To elect or appoint directors, officers, employees and agents of the corporation, define their duties and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts and other benefit and incentive plans for any or all of its current or former directors, officers, employees and agents;

(13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific or educational purposes and for other purposes that further the corporate interest;

(14) To impose dues, assessments, admission and transfer fees upon its members;

(15) To establish conditions for admission of members, admit members and issue memberships;

(16) To carry on a business;

(17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

30-3-25. EMERGENCY POWERS. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

30-3-26. ULTRA VIRES. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by a director, or by a member or members in a derivative proceeding.

(3) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative.

30-3-27. CORPORATE NAME. The corporate name:

(1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words; provided however, that if the word "company" or its abbreviation is used, it shall not be immediately preceded by the word "and" or by an abbreviation of or symbol representing the word "and."

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one (1) or more of the purposes contained in its articles of incorporation.

(3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this act, or the name of a corporation which has, in effect, a registration of its corporate name as provided in this act, except that this provision shall not apply if the applicant

files with the secretary of state either of the following:

(a) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one (1) or more words are added to make such name distinguishable from such other name; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one (1) or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this state.

Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practice in the use of trade names, nor derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names.

The assumption of a name in violation of the provisions of this section shall not affect or vitiate the corporate existence, but the courts of this state, having equity jurisdiction, may, upon the application of the state, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation in violation from doing business under any name assumed in violation of the provisions of this section.

30-3-28. RESERVED NAME. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this act.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of four (4) months.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

30-3-29. REGISTERED NAME. Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this act.

Such registration shall be made by:

(1) Filing with the secretary of state:

(a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(b) A certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations; and

(c) Paying to the secretary of state a registration fee in the amount of ten dollars ($10.00).

Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

30-3-30. REGISTERED OFFICE AND REGISTERED AGENT. Each corporation must continuously maintain in this state:

(1) A registered office with the same address as that of the registered agent; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose office is identical with the registered office;

(b) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(c) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

30-3-31. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. (1) A corporation may change its registered office or registered agent by making the change on the annual report or by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

30-3-32. RESIGNATION OF REGISTERED AGENT. (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state the original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the secretary of state shall mail one (1) copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office as shown in the most recent annual report filed pursuant to section 30-3-136, Idaho Code.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

30-3-33. SERVICE ON CORPORATION. (1) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(2) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent annual report filed pursuant to section 30-3-136, Idaho Code. Service is perfected under this subsection on the earliest of:

(a) The date the corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the corporation; or

(c) Five (5) days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

(3) This section does not prescribe the only means, or necessarily the required means of serving a corporation.

30-3-34. ADMISSION OF MEMBERS. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) No person shall be admitted as a member without his or her consent.

(3) No person who is not an incorporator shall become a member of a cooperative corporation unless such person shall agree to use services furnished by the corporation when such service shall be available through its facilities.

30-3-35. CONSIDERATION. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

30-3-36. NO REQUIREMENT OF MEMBERS. A corporation, except a cooperative corporation, is not required to have members.

30-3-37. DIFFERENCES IN RIGHTS AND OBLIGATIONS OF MEMBERS. All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations or divide voting rights by voting districts. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

30-3-38. TRANSFERS. Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

30-3-39. MEMBER'S LIABILITY TO THIRD PARTIES. A member of a corporation is not, as such, personally liable for the acts, debts, liabilities or obligations of the corporation.

30-3-40. MEMBER'S LIABILITY FOR DUES, ASSESSMENTS AND FEES. A member may become liable to the corporation for dues, assessments or fees; provided however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

30-3-41. RESIGNATION. (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

30-3-42. TERMINATION, EXPULSION AND SUSPENSION. (1) No member, except a member of a religious corporation, may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) The articles or bylaws set forth a procedure that provides:

(i) Not less than fifteen (15) days' prior written notice of the expulsion, suspension or termination and the reasons therefor; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

(4) Any proceeding challenging an expulsion, suspension or termi-

nation, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

30-3-43. PURCHASE OF MEMBERSHIPS. A corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of section 30-3-108, Idaho Code.

30-3-44. DERIVATIVE SUITS. (1) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(a) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a corporation must be verified and alleged with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) On termination of the proceeding the court may require the complainants to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(5) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise or settlement of an action or claim, the court may award the complainants reasonable expenses, including attorney's fees.

30-3-45. DELEGATES. (1) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations and obligations of delegates including their selection and removal;

(b) Calling, noticing, holding and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

30-3-46. ANNUAL AND REGULAR MEETINGS. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(4) At the annual meeting:

(a) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of section 30-3-50, Idaho Code.

(5) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections 30-3-50, Idaho Code.

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

30-3-47. SPECIAL MEETING. (1) A corporation with members shall hold a special meeting of members:

(a) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(b) Except as provided in the articles or bylaws of a religious corporation if the holders of at least ten percent (10%) of the voting power of any corporation sign, date and deliver to any corporate officer one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the ten percent (10%) requirement of subsection (1) of this section has been met.

(3) If a notice for a special meeting demanded under subsection (1)(b) of this section is not given pursuant to section 30-3-50, Idaho Code, within thirty (30) days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (4) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 30-3-50, Idaho Code.

(4) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required in section 30-3-50, Idaho Code, may be conducted at a special meeting of members.

30-3-48. COURT-ORDERED MEETINGS. (1) The district court of the county where a corporation's principal office or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(a) On application of any member or other person entitled to par-

ticipate in an annual or regular meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty (40) days after the date it was required to be held; or

(c) On application of a member who signed a demand for a special meeting valid under section 30-3-47, Idaho Code, a person or persons entitled to call a special meeting, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order.

30-3-49. ACTION BY WRITTEN CONSENT. (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by this act to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one (1) or more written consents describing the action taken, signed by those members representing at least eighty percent (80%) of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under section 30-3-48, Idaho Code, or 30-3-52, Idaho Code, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the secretary of state.

(4) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten (10) days after such written notice is given.

30-3-50. NOTICE OF MEETING. (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection

(3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided however, that notice of matters referred to in subsection (3)(b) of this section must be given as provided in subsection (3) of this section.

(3) Notice is fair and reasonable if:

(a) The corporation notifies its members of the place, date, and time of each annual, regular and special meeting of members no fewer than ten (10) (or if notice is mailed by other than first class or registered mail, thirty (30)) nor more than sixty (60) days before the meeting date;

(b) Notice of an annual or regular meeting includes a description of any matters or matters that must be approved by the members under section 30-3-81, 30-3-88, 30-3-91, 30-3-97, 30-3-103, 30-3-107 or 30-3-112, Idaho Code; and

(c) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 30-3-52, Idaho Code, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) Requested in writing to do so by a person entitled to call a special meeting; and

(b) The request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

30-3-51. WAIVER OF NOTICE. (1) A member may waive any notice required in this act, the articles or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; or

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

30-3-52. RECORD DATE -- DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE. (1) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or

provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(4) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy (70) days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

30-3-53. ACTION BY MAILED WRITTEN BALLOT OR ABSENTEE BALLOT. (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. The articles or bylaws may provide that the members may vote by mail or by absentee ballot on any corporate action that may be taken at any annual, regular or special meeting of members.

(2) A written ballot for action taken without a meeting shall:

(a) Set forth each proposed action; and

(b) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot alone pursuant to this section when a meeting is not held shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals

equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

30-3-54. MEMBERS' LIST FOR MEETING. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent or attorney is entitled on written demand to inspect and, subject to the limitations of sections 30-3-131(3) and 30-3-133, Idaho Code, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent or attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection (2) of this section, the district court of the county where a corporation's principal office, or if none in this state its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) of this section, prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and

copy any corporate record.

30-3-55. VOTING ENTITLEMENT GENERALLY. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more persons, their acts with respect to voting shall have the following effect:

(a) If only one (1) votes, such act binds all; and

(b) If more than one (1) votes, the vote shall be divided on a pro rata basis.

30-3-56. QUORUM REQUIREMENTS. (1) Unless this act, the articles or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented in person, by proxy, by mailed written ballot or by absentee ballot at a meeting of members to constitute a quorum on that matter.

(2) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(3) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(4) Unless one-third (1/3) or more of the voting power is present in person, by proxy, by mailed written ballot or by absentee ballot, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

30-3-57. VOTING REQUIREMENTS. (1) Unless this act, the articles or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

(2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

30-3-58. PROXIES. (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form; provided however, that no proxy shall be valid for more than three (3) years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing

the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a written statement that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to section 30-3-61, Idaho Code, and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(7) The articles or bylaws of a corporation may prescribe reasonable conditions under which proxy voting may be exercised.

30-3-59. CUMULATIVE VOTING FOR DIRECTORS. (1) If the articles or bylaws specifically provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one (1) member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 30-3-70, Idaho Code, are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast, or, if such action is taken by written ballot, all memberships entitled to vote were voted, and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(4) Members may not cumulatively vote if the directors and members are identical.

30-3-60. OTHER METHODS OF ELECTING DIRECTORS. A corporation may provide in its articles or bylaws for election of directors by members or delegates:

(1) On the basis of chapter or other organizational unit;

(2) By region or other geographic unit, including voting districts and, in respect to each such voting districts the articles or bylaws shall describe the boundaries thereof and designate the number of directors that shall be elected by the members residing therein;

(3) By preferential voting; or

(4) By any other reasonable method.

30-3-61. CORPORATION'S ACCEPTANCE OF VOTES. (1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to

the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity.

(b) The name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver or proxy appointment;

(c) Two (2) or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders; and

(d) If:

(i) The name signed purports to be that of an administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(ii) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) Contested elections shall be referred to the board of directors, which shall, after reviewing all ballots, proxies, reports of election inspectors or judges, and any other relevant documents or materials, certify the results of the election. In the case of a tie vote between candidates, the tie shall be determined by a toss of a coin. If allowed by the bylaws of the corporation, the board of directors shall have the power to call a new election if, after reviewing all relevant documents and information, the board of directors is unable to certify the results of the election.

30-3-62. VOTING AGREEMENTS. (1) If the articles or bylaws specifically allow for voting agreements, two (2) or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to ten (10) years.

(2) A voting agreement created under this section is specifically enforceable.

30-3-63. REQUIREMENT FOR AND DUTIES OF BOARD. (1) Each corporation must have a board of directors.

(2) Except as provided in this act or subsection (3) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(3) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

30-3-64. QUALIFICATIONS OF DIRECTORS. All directors must be individuals. If the corporation is a cooperative, all directors must be members of the corporation, provided, that unless otherwise provided in the bylaws, a person who has the right to vote on behalf of an entity which is a member of the corporation may serve as a director. The articles or bylaws may prescribe other qualifications for directors.

30-3-65. NUMBER OF DIRECTORS. (1) The board of directors must consist of three (3) or more individuals, with the number specified in or fixed in accordance with the articles or bylaws. Notwithstanding the foregoing, the board of directors of a religious corporation must consist of at least one (1) individual, with the number specified in or fixed in accordance with the articles or bylaws.

(2) The number of directors may be increased or decreased within the limitations contained in subsection (1) of this section from time to time by amendment to or in the manner prescribed in the articles or bylaws.

30-3-66. ELECTION, DESIGNATION AND APPOINTMENT OF DIRECTORS. (1) If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

(2) If the corporation does not have members, all the directors, except the initial directors, shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors, other than the initial directors, shall be elected by the board.

30-3-67. TERMS OF DIRECTORS GENERALLY. (1) The articles or bylaws

must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five (5) years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.

(2) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(3) Except as provided in the articles or bylaws:

(a) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(b) The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed, and qualifies, or until there is a decrease in the number of directors.

30-3-68. STAGGERED TERMS FOR DIRECTORS. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

30-3-69. RESIGNATION OF DIRECTORS. (1) A director may resign at any time by delivering written notice to the board of directors, its presiding officer or to the president or secretary.

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

30-3-70. REMOVAL OF DIRECTORS ELECTED BY MEMBERS OR DIRECTORS. (1) The members may remove one (1) or more directors elected by them without cause.

(2) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(3) Except as provided in subsection (9) of this section, a director may be removed under subsection (1) or (2) of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(4) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

(6) In computing whether a director is protected from removal

under subsections (2) through (4) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(7) An entire board of directors may be removed under subsections (1) through (5) of this section.

(8) A director elected by the board may be removed without cause by the vote of two-thirds (2/3) of the directors then in office or such greater number as is set forth in the articles or bylaws; provided however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(9) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(10) The articles or bylaws of a religious corporation may:

(a) Limit the application of this section; and

(b) Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

30-3-71. REMOVAL OF DESIGNATED OR APPOINTED DIRECTORS. (1) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(2) Appointed directors:

(a) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(b) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary; and

(c) A removal is effective when the notice is effective unless the notice specifies a future effective date.

30-3-72. VACANCY ON BOARD. (1) Unless the articles or bylaws provide otherwise, and except as provided in subsections (2) and (3) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who

appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 30-3-69(2), Idaho Code, or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

30-3-73. COMPENSATION OF DIRECTORS. Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation, fees, insurance or benefits, if any, of directors.

30-3-74. REGULAR AND SPECIAL MEETINGS. (1) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(2) A board of directors may hold regular or special meetings in or out of this state.

(3) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

30-3-75. ACTION WITHOUT MEETING. (1) Unless the articles or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

30-3-76. CALL AND NOTICE OF MEETINGS. (1) Unless the articles, bylaws or subsection (3) of this section provide otherwise, regular meetings of the board may be held without notice.

(2) Unless the articles, bylaws or subsection (3) of this section provide otherwise, special meetings of the board must be preceded by at least two (2) days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(3) In corporations without members any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 30-3-77, Idaho Code.

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board.

30-3-77. WAIVER OF NOTICE. (1) A director may, at any time before, during or after the meeting, waive any notice required by this act, the articles or bylaws. Except as provided in subsection (2) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this act, the articles or bylaws objects to lack of notice and does not thereafter vote for or assent to the objected to action.

30-3-78. QUORUM AND VOTING. (1) Except as otherwise provided in this act, the articles or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third (1/3) of the number of directors in office or two (2) directors.

(2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this act, the articles or bylaws require the vote of a greater number of directors.

30-3-79. COMMITTEES OF THE BOARD. (1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one (1) or more committees of the board and appoint members of the board to serve on them. Each committee shall have two (2) or more directors, who serve at the pleasure of the board.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles or bylaws to take action under section 30-3-78, Idaho Code.

(3) Sections 30-3-74 through 30-3-78, Idaho Code, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 30-3-63, Idaho Code.

(5) A committee of the board may not, however:

(a) Authorize distributions;

(b) Approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(c) Elect, appoint or remove directors or fill vacancies on the

board or on any of its committees; or

(d) Adopt, amend or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 30-3-80, Idaho Code.

30-3-80. GENERAL STANDARDS FOR DIRECTORS. (1) A director shall discharge his duties as a director, including his duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(c) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(5) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

30-3-81. DIRECTOR -- CONFLICT OF INTEREST. (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (2) of this section.

(2) A transaction in which a director of a corporation has a conflict of interest may be approved if:

(a) The material facts of the transaction and the director's

interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved or ratified the transaction; or

(b) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved or ratified the transaction.

(3) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) Another entity of which the director is a director, officer or trustee is a party to the transaction.

(4) For purposes of subsection (2) of this section, a conflict of interest transaction is authorized, approved or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee, who have no direct or indirect interest in the transaction. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) of this section if the transaction is otherwise approved as provided in subsection (2) of this section.

(5) For purposes of subsection (2)(b) of this section, a conflict of interest transaction is authorized, approved or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (c)(1) of this section, may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (3)(a) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this act. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(6) The articles, bylaws or a resolution of the board may impose additional requirements on conflict of interest transactions.

30-3-82. LOANS TO OR GUARANTEES FOR DIRECTORS AND OFFICERS. (1) Except with regard to loan or guarantee programs available to all members, a corporation may not lend money to or guarantee the obligation of a director or officer of the corporation, provided that a cooperative corporation may lend money to or guarantee the obligation of a director or officer with regard to loan or guarantee programs available to all members.

(2) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

30-3-83. REQUIRED OFFICERS. (1) Unless otherwise provided in the

articles or bylaws, a corporation shall have a president, a secretary, a treasurer and such other officers as are appointed by the board. Except in the case of religious corporations, any two (2) or more offices may be held by the same person, except the offices of president and secretary. A religious corporation is not required to have officers.

(2) The bylaws or the board shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) The same individual may simultaneously hold more than one (1) office in a corporation.

30-3-84. DUTIES AND AUTHORITY OF OFFICERS. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

30-3-85. STANDARDS OF CONDUCT FOR OFFICERS. (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging his duties an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(c) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(4) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(5) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

30-3-86. RESIGNATION AND REMOVAL OF OFFICERS. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its

board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(2) A board may remove any officer at any time with or without cause.

30-3-87. OFFICERS' AUTHORITY TO EXECUTE DOCUMENTS. Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two (2) officers in category 1 below or by one (1) officer in category 1 below and one (1) officer in category 2 below.

Category 1 - The presiding officer of the board and the president.

Category 2 - A vice president, the secretary, treasurer and executive director.

30-3-88. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS. (1) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or

not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (1) or (2) of this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection herewith.

(4) Any determination under subsections (1) or (2) of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (1) or (2) of this section. Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

(b) If such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) By the members.

(5) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this section.

(6) The indemnification and advancement of expenses provided by, or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(7) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section; provided that

credit unions chartered under the laws of the state of Idaho may provide indemnification only by insurance.

(8) For the purposes of this section, the term "corporation" includes, in addition to the resulting corporation, all constituent corporations and their predecessors absorbed in a consolidation or merger, which, if separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents.

(9) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, and personal representatives of such a person.

30-3-89. AUTHORITY TO AMEND ARTICLES. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

30-3-90. AMENDMENT OF ARTICLES BY DIRECTORS. (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles without member approval:

(a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) To delete the names and addresses of the initial directors;

(c) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(d) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(e) To make any other change expressly permitted by this act to be made by director action.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's articles subject to any approval required pursuant to section 30-1-99, Idaho Code. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 30-3-76(3), Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

30-3-91. AMENDMENT OF ARTICLES BY DIRECTORS AND MEMBERS. (1) Unless this act, the articles, bylaws, the members, acting pursuant to

subsection (2) of this section, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

(a) By the board, if the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) Except as provided in section 30-3-90(1), Idaho Code, by the members by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing by any person or persons whose approval is required by a provision of the articles authorized in this section.

(2) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the articles or board approval is required in subsection (1) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 30-3-50, Idaho Code. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot or absentee ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

30-3-92. CLASS VOTING BY MEMBERS ON AMENDMENTS TO ARTICLES. (1) The members of a class in a corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification or termination of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only

if a class vote is provided for in the articles or bylaws.

(3) If a class is to be divided into two (2) or more classes as a result of an amendment to the articles of a corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(4) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(5) A class of members of a corporation, except a religious corporation, is entitled to the voting rights granted in this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

30-3-93. ARTICLES OF AMENDMENT. A corporation amending its articles shall deliver to the secretary of state articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption;

(4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) If approval by members was required:

(a) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(b) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

(6) If approval of the amendment by some person or persons other than the members, the board or the incorporators is required pursuant, to section 30-3-99, Idaho Code, a statement that the approval was obtained.

30-3-94. RESTATED ARTICLES OF INCORPORATION. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(2) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in section 30-3-91, Idaho Code.

(3) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(4) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of

its members of the proposed membership meeting in writing in accordance with section 30-3-50, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(5) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(6) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section 30-3-91, Idaho Code.

(7) If the restatement includes an amendment requiring approval pursuant to section 30-3-99, Idaho Code, the board must submit the restatement for such approval.

(8) A corporation restating its articles shall deliver to the secretary of state articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring approval by the members, the information required by section 30-3-93, Idaho Code; and

(c) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 30-3-99, Idaho Code, a statement that such approval was obtained.

(9) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(10) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect.

30-3-95. EFFECT OF AMENDMENT AND RESTATEMENT OF ARTICLES. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

30-3-96. AMENDMENT OF BYLAWS BY DIRECTORS. If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's bylaws subject to any approval required pursuant to section 30-3-99, Idaho Code. The corporation shall provide notice of any meeting of directors at which an amendment is to be

approved. The notice shall be in accordance with section 30-3-76(3), Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

30-3-97. AMENDMENT OF BYLAWS BY DIRECTORS AND MEMBERS. (1) Unless the articles or bylaws provide otherwise, an amendment to a corporation's bylaws to be adopted must be approved:

(a) By a simple majority of the board;

(b) By the members by a simple majority of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing by any person or persons whose approval is required by a provision of the articles authorized in section 30-3-99, Idaho Code.

(2) If the board initiates an amendment to the bylaws or board approval is required to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 30-3-50, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(4) If the board or the members seek to have the amendment approved by the members by written consent or written ballot or absentee ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

30-3-98. CLASS VOTING BY MEMBERS ON AMENDMENTS TO BYLAWS. (1) If the members of a class in a corporation are entitled to vote as a class on amendments to the bylaws, they may vote as a class on a proposed amendment to the bylaws if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification or termination of all or part of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) The members of a class of a religious corporation are enti-

tled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(3) If a class is to be divided into two (2) or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and

(4) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(5) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

30-3-99. APPROVAL BY THIRD PERSONS. The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of such person or persons.

30-3-100. APPROVAL OF PLAN OF MERGER. (1) One (1) or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in section 30-3-101, Idaho Code.

(2) The plan of merger must set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(b) The terms and conditions of the planned merger;

(c) The manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations or securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) Other provisions relating to the planned merger.

30-3-101. ACTION ON PLAN BY BOARD, MEMBERS AND THIRD PERSONS. (1) Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, a plan of merger to be adopted must be approved:

(a) By the board;

(b) By the members, if any, by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing by any person or persons whose approval is required by a provision of the articles authorized in section 30-3-99, Idaho Code, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in

accordance with section 30-3-76(3), Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed merger.

(3) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 30-3-50, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot or absentee ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(6) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 30-3-92 or 30-3-98, Idaho Code. The plan is approved by a class of members by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(7) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

30-3-102. ARTICLES OF MERGER. After a plan of merger is approved by the board of directors, and if required in section 30-3-101, Idaho Code, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth:

(1) The plan of merger;

(2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) If approval by members was required:

(a) The designation, number of members outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class.

(4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 30-3-101(1)(c), Idaho Code, a statement that the approval was obtained.

30-3-103. EFFECT OF MERGER. When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

30-3-104. MERGER WITH FOREIGN CORPORATION. (1) One (1) or more foreign business or nonprofit corporations may merge with one (1) or more domestic nonprofit corporations if:

(a) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) The foreign corporation complies with section 30-3-102, Idaho Code, if it is the surviving corporation of the merger; and

(c) Each domestic nonprofit corporation complies with the applicable provisions of sections 30-3-99 and 30-3-101, Idaho Code, and, if it is the surviving corporation of the merger, with section 30-3-102, Idaho Code.

(2) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

30-3-105. BEQUESTS, DEVISES AND GIFTS. Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation

and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

30-3-106. SALE OF ASSETS IN REGULAR COURSE OF ACTIVITIES AND MORTGAGE OF ASSETS. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(2) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (1) of this section is not required.

30-3-107. SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF ACTIVITIES. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized in subsection (2) of this section.

(2) Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to subsection (4) of this section, require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) By the board;

(b) By the members by a simple majority of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing by any person or persons whose approval is required by a provision of the articles authorized in section 30-3-50, Idaho Code, for an amendment to the articles or bylaws.

(3) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 30-3-76(3), Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 30-3-50, Idaho Code. The notice must also state that the pur-

pose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot or absentee ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(7) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

30-3-108. PROHIBITED DISTRIBUTIONS. Except as authorized in section 30-3-109, Idaho Code, a corporation shall not make any distributions.

30-3-109. AUTHORIZED DISTRIBUTIONS. (1) Corporations may make distributions upon dissolution in conformity with section 30-3-114 or 30-3-115, Idaho Code.

(2) The operations of a corporation which is a cooperative corporation shall be so conducted that all members will, through their membership, furnish capital for the corporation as provided in the corporation's bylaws. No interest or dividends shall be paid or payable by the corporation on any capital furnished by its members. The corporation is obligated to account on a membership basis to all its members for all amounts received and receivable from the furnishing of service and from other sources in excess of operating costs and expenses properly chargeable against the furnishing of service. The corporation is obligated to pay by credits to a capital account for each member all such amounts in excess of operating costs and expenses. The books and records of the corporation shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member is clearly reflected and credited in an appropriate record to the capital account of each member.

In the event of dissolution or liquidation of the corporation, after all outstanding indebtedness of the corporation shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members.

If, at any time prior to dissolution or liquidation, the board shall determine that the financial condition of the corporation will not be impaired thereby, the capital credited to member's accounts may be retired in full or in part.

30-3-110. DISSOLUTION BY INCORPORATORS OR DIRECTORS AND THIRD PERSONS. (1) A majority of the incorporators or directors of a corporation that has no members may, prior to the organization meeting of directors and subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of

state articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with section 30-3-76(3), Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolution of the corporation.

(3) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

30-3-111. DISSOLUTION BY DIRECTORS, MEMBERS AND THIRD PERSONS. (1) Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) By the board;

(b) By the members, if any, by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing by any person or persons whose approval is required by a provision of the articles authorized in section 30-3-99, Idaho Code, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 30-3-76(3), Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 30-3-50, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

30-3-112. ARTICLES OF DISSOLUTION. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

(a) The name of the corporation;
(b) The date dissolution was authorized;
(c) A statement that dissolution was approved by a sufficient vote of the board;
(d) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
(e) If approval by members was required:
(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and
(ii) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.
(f) If approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to section 30-3-111(1)(c), Idaho Code, a statement that the approval was obtained; and
(2) A corporation is dissolved upon the effective date of its articles of dissolution.

30-3-113. EFFECT OF DISSOLUTION. (1) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:
(a) Preserving and protecting its assets and minimizing its liabilities;
(b) Discharging or making provision for discharging its liabilities and obligations;
(c) Disposing of its properties that will not be distributed in kind;
(d) Returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
(e) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
(f) If no provision has been made in its articles or bylaws for distribution of assets on dissolution, it may transfer, subject to any contractual or legal requirement, its assets:
(i) To one (1) or more persons described in section 501(c)(3) of the internal revenue code; or
(ii) To its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving; and
(g) Doing every other act necessary to wind up and liquidate its assets and affairs.
(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;
(b) Subject its directors or officers to standards of conduct different from those prescribed in sections 30-3-80 and 30-3-85, Idaho Code;
(c) Change quorum or voting requirements for its board or members; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws;
(d) Prevent commencement of a proceeding by or against the corporation in its corporate name;
(e) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
(f) Terminate the authority of the registered agent.

30-3-114. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION. (1) The directors of a dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
(2) The directors of a dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
(a) Describe information that must be included in a claim;
(b) Provide a mailing address where a claim may be sent;
(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
(d) State that the claim will be barred if not received by the deadline.
(3) A claim against the dissolved corporation is barred:
(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline;
(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.
(4) For purposes of this section "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

30-3-115. UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION. (1) The directors of a dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
(2) The notice must:
(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;
(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five (5) years after publication of the notice.

(3) If the directors of a dissolved corporation publish a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five (5) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 30-3-114, Idaho Code;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

30-3-116. AUTHORITY TO TRANSACT BUSINESS REQUIRED BY FOREIGN CORPORATION. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

30-3-117. CONSEQUENCES TO FOREIGN CORPORATION OF TRANSACTING BUSINESS WITHOUT AUTHORITY. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

30-3-118. APPLICATION OF FOREIGN CORPORATION FOR CERTIFICATE OF AUTHORITY. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 30-3-121, Idaho Code;

(b) The name of the state or country under whose law it is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The address of its registered office in this state and the name of its registered agent at that office;

(f) The names and usual business or home addresses of its current directors and officers;

(g) Whether the foreign corporation has members; and

(2) The foreign corporation shall deliver with the completed application a certificate of corporate existence or status, or a document of similar import.

30-3-119. FOREIGN CORPORATION AMENDED CERTIFICATE OF AUTHORITY. (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(a) Its corporate name;

(b) The period of its duration; or

(c) The state or country of its incorporation.

(2) The requirements of section 30-3-119, Idaho Code, for obtaining an original certificate of authority apply to obtaining an amended certificate under this section and the corporation shall deliver with the application a certificate evidencing the change duly authenticated by the secretary of state or other official having custody or corpo-

rate records in the state or country under whose law it is incorporated.

30-3-120. EFFECT OF ISSUANCE OF CERTIFICATE OF AUTHORITY TO FOREIGN CORPORATION. (1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this act.

(2) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privilege as and, except as otherwise provided by this act, is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(3) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

30-3-121. CORPORATE NAME OF FOREIGN CORPORATION. (1) If the corporate name of a foreign corporation does not satisfy the requirements of section 30-3-27, Idaho Code, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized in subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation must not be the same as, or deceptively similar to:

(a) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 30-3-28 or 30-3-29, Idaho Code; and

(c) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this

state and the foreign corporation:

(a) Has merged with the other corporation;

(b) Has been formed by reorganization of the other corporation; or

(c) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 30-3-27, Idaho Code, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 30-3-27, Idaho Code, and obtains an amended certificate of authority under section 30-3-119, Idaho Code.

30-3-122. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION. Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office with the same address as that of its registered agent; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose office is identical with the registered office;

(b) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(c) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

30-3-123. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by making the change on its annual report or by delivering to the secretary of state for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

30-3-124. RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION. (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

30-3-125. SERVICE ON FOREIGN CORPORATION. (1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report filed under section 30-3-136, Idaho Code, if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under section 30-3-126, Idaho Code; or

(c) Has had its certificate of authority revoked under section 30-3-128, Idaho Code.

(3) Service is perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means of serving a foreign corporation.

30-3-126. WITHDRAWAL OF FOREIGN CORPORATION. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated;

(b) That the corporation is not transacting business in this state;

(c) That the corporation surrenders its authority to transact

business in this state;

(d) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereon in the manner provided in section 30-3-125, Idaho Code;

(e) A post-office address to which a copy of any process against the corporation may be served on it pursuant to the provisions of section 30-3-125, Idaho Code; and

(f) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this act prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one (1) of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

(2) Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one (1) of such duplicate originals in his office.

(c) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

30-3-127. GROUNDS FOR REVOCATION OF CERTIFICATE OF AUTHORITY OF FOREIGN CORPORATION. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(1) The corporation has failed to appoint and maintain a registered agent in this state as required by this act; or

(2) The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this act; or

(3) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this act; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this act; or

(5) The corporation has continued to exceed or abuse the author-

ity conferred upon it by law or its certificate of authority.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) He shall have given the corporation not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state; and

(b) The corporation shall fail prior to revocation to file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

30-3-128. PROCEDURE AND EFFECT OF REVOCATION OF AUTHORITY OF FOREIGN CORPORATION. (1) The secretary of state upon determining that one (1) or more grounds exist under section 30-3-126, Idaho Code, for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under section 30-3-125, Idaho Code.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground for revocation determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under section 30-3-125, Idaho Code, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 30-3-125, Idaho Code.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

30-3-129. APPEAL FROM REVOCATION OF CERTIFICATE OF AUTHORITY OF FOREIGN CORPORATION. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty (30) days after the service of the certificate of revocation is perfected under section 30-3-125, Idaho Code. The foreign corporation appeals by petitioning the court to set aside

the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

30-3-130. CORPORATE RECORDS. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized in section 30-3-79(4), Idaho Code.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(e) All written communications to members generally within the past seven (7) years, including the financial statements furnished for the past seven (7) years under section 30-3-134, Idaho Code;

(f) A list of the names and business or home addresses of its current directors and officers; and

(g) Its most recent annual report delivered to the secretary of state under section 30-3-136, Idaho Code.

30-3-131. INSPECTION OF RECORDS BY MEMBERS. (1) Subject to subsection (5) of this section and section 30-3-132(3), Idaho Code, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in section 30-3-130(5), Idaho Code, if the member gives the corporation written notice or a written demand at least fifteen (15) business days before the date on which the member wishes to inspect and copy.

(2) Subject to paragraph (c) of this subsection, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3)

of this section and gives the corporation written notice at least fifteen (15) business days before the date on which the member wishes to inspect and copy:

(a) Excerpts from any records required to be maintained under section 30-3-130(1), Idaho Code, to the extent not subject to inspection under section 30-3-131(1), Idaho Code;

(b) Accounting records of the corporation, and

(c) Subject to section 30-3-133, Idaho Code, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) of this section only if:

(a) The member's demand is made in good faith and for a proper purpose reasonably related to the member's interest as a member of the corporation;

(b) The member describes with reasonable particularity the purpose and the records the member desires to inspect;

(c) The records are directly connected with this purpose; and

(d) The board of directors shall determine whether a member's request is for a proper purpose.

(4) The provisions of this section do not affect:

(a) The right of a member to inspect records under section 30-3-54, Idaho Code, or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) The board of directors may restrict or deny inspection of personnel and employment records, and confidential attorney-client communications if it determines that such restriction or denial of access to said records or information is in the best interests of the corporation.

(5) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

30-3-132. SCOPE OF INSPECTION RIGHTS. (1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under section 30-3-131, Idaho Code, includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under section 30-3-131(2)(c), Idaho Code, by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

30-3-133. LIMITATIONS ON USE OF MEMBERSHIP LIST. Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or prop-

erty will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Sold to or purchased by any person.

30-3-134. FINANCIAL STATEMENTS FOR MEMBERS. (1) Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(2) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(a) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

30-3-135. REPORT OF INDEMNIFICATION TO MEMBERS. If a corporation indemnifies or advances expenses to a director under section 30-3-88, Idaho Code, in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

30-3-136. ANNUAL REPORT FOR SECRETARY OF STATE. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state an annual report on a form prescribed and furnished by the secretary of state.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between July 1 and November 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between July 1 and November 1 of the following calendar years.

(4) If an annual report does not contain the information required in this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required in this section and delivered to the secretary of state not later than November 30, it is deemed to be timely

filed.

30-3-137. FORFEITURE OF CORPORATIONS. Each corporation which fails to file its annual report on or before November 1 of the year for which it is required shall forfeit its corporate powers if a domestic corporation or its right to do business in the state of Idaho if a foreign corporation. The forfeiture shall occur on December 1 of the same year.

30-3-138. CONSEQUENCES OF FORFEITURE. (1) It shall be unlawful for any forfeited domestic or foreign corporation to exercise its corporate powers or to transact any business in this state. The attorney general or any other person may bring an action in the district court to enjoin any such unlawful exercise of powers or transaction of business.

(2) Any statutory limitation period on any claim for relief against a domestic or foreign corporation shall be tolled from the date of its forfeiture until its corporate powers or right to do business are reinstated in accordance with section 30-1-140, Idaho Code.

30-3-139. TRUSTEES FOR FORFEITED CORPORATIONS -- CONTINUATION OF ACTIONS. (1) The directors of any forfeited domestic or foreign corporation, or any other person or persons who may be appointed by any court of competent jurisdiction to perform that duty, are deemed to be trustees of the corporation and stockholders or members of the corporation whose power or right to do business is forfeited, and have full power to settle the affairs of the corporation, and to maintain or defend any action or proceeding then pending in behalf of or against the corporation, or to take such legal proceedings as may be necessary to fully settle the affairs of the corporation, and such directors or managers, as such trustees, may be sued in any of the courts of this state after such forfeiture by any person having a claim against the corporation.

(2) No action pending against any corporation at the time of forfeiture shall abate thereby, but may be prosecuted to final judgment, and may be enforced by execution with the same force and effect and in like manner as though no forfeiture had occurred.

(3) Where judgment has been entered against any corporation prior to forfeiture, an execution may be issued thereon and the property of the corporation, or that which may come into the hands of any trustee for it, may be levied upon, seized and sold to satisfy the same with like force and effect as though no forfeiture had occurred.

30-3-140. REINSTATEMENT OF CORPORATIONS. (1) A corporation whose corporate powers or right to do business has been forfeited may apply to the secretary of state for reinstatement. Application will be made by filing a current annual report and paying a penalty equal to ten dollars ($10.00) for each fiscal year or fraction thereof during which the corporation was in a forfeited status. Corporations which are not organized for profit shall in no event be required to pay a penalty of greater than thirty dollars ($30.00). Foreign corporations shall, in no event, be required to pay a penalty of greater than one hundred ten dollars ($110). When the required penalty has been paid and the annual

report has been filed, the secretary of state shall issue the corporation a certificate of reinstatement and indicate the status change on the records of his office.

(2) Reinstatement of a corporation shall have the following effects:

(a) From and after the granting of the reinstatement, the corporation's powers and authority to do business shall be restored;

(b) Any statutory limitation period which may have been tolled by the corporation's forfeiture shall begin to run on the date of reinstatement from the point at which it was tolled on the date of forfeiture.

(3) If the name of a reinstating corporation or one deceptively similar to it has been adopted by another corporation during the period of forfeiture, the corporation must, as a condition of reinstatement, adopt a new name or obtain the required consent, as required for a new corporation in sections 30-3-27 and 30-3-121, Idaho Code.

30-3-141. DISSOLUTION OF CORPORATIONS TEN YEARS AFTER FORFEITURE. (1) Domestic corporations will be dissolved by operation of law on March 1 of the year following the tenth anniversary of their forfeiture, unless their corporate powers are earlier reinstated.

(2) Upon request, the secretary of state shall issue a certificate verifying the dissolution of any corporation dissolved hereunder.

(3) The district court in the county of the corporation's registered office shall have full power to liquidate the assets of a corporation so dissolved in an action by a shareholder, creditor or other interested person. Such shareholder, creditor or other interested person shall include in his application for liquidation a certificate from the secretary of state verifying that the corporation has been dissolved pursuant to this section.

30-3-142. APPLICATION TO EXISTING DOMESTIC CORPORATIONS. This act applies to all domestic nonprofit corporations in existence on the effective date of this act that were incorporated under the laws of this state.

30-3-143. APPLICATION TO QUALIFIED FOREIGN CORPORATION. A foreign corporation authorized to transact business in this state on the effective date of this act is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

30-3-144. SAVING PROVISIONS. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this act does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture or

punishment incurred because of the violation, before its repeal;

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(e) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

(3) Except as specifically provided in this act, this act shall not affect the provisions of other statutes applicable to any form of nonprofit corporation.

30-3-145. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Approved March 26, 1993.

CHAPTER 221
(H.B. No. 355, As Amended)

AN ACT

RELATING TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5702, IDAHO CODE, TO AUTHORIZE THE ESTABLISHMENT OF UNITS WITHIN THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5703, IDAHO CODE, TO PROVIDE FOR UNITS WITHIN THE DEPARTMENT OF ADMINISTRATION, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 67-5704, IDAHO CODE, TO PROVIDE FOR ADVANCE PAYMENTS AND INTERACCOUNT TRANSACTIONS TO UNITS OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5745, IDAHO CODE, TO CREATE AN ADVISORY COUNCIL ON INFORMATION TECHNOLOGY WITHIN THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5747, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5748, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 67-5760, IDAHO CODE, TO PROVIDE FOR INSURANCE MANAGEMENT AND THE EMPLOYMENT OF ADDITIONAL NECESSARY PERSONNEL; AMENDING SECTION 67-5761, IDAHO CODE, TO PROVIDE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, AND TO RENUMBER; AMENDING SECTION 67-5762, IDAHO CODE, TO PROVIDE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5767, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY PROVIDE SERVICE TO SCHOOL DISTRICTS AND OTHER POLITICAL SUBDIVISIONS; AMENDING SECTION 67-5768, IDAHO CODE, AS AMENDED BY SECTION 97, CHAPTER 213, LAWS OF 1990, TO PROVIDE FOR POLICIES AND CONTRACTS PROCURED BY THE DIRECTOR OF THE DEPARTMENT OF ADMIN-

ISTRATION; AMENDING SECTION 67-5769, IDAHO CODE, TO PROVIDE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 67-5771, IDAHO CODE, TO DELETE REFERENCE TO THE ADMINISTRATOR OF GROUP INSURANCE; AMENDING SECTION 67-5772, IDAHO CODE, TO PROVIDE DUTIES OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 65-5773, IDAHO CODE, TO CORRECTLY DESIGNATE THE SECTION AND TO PROVIDE POWERS AND DUTIES TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION REGARDING RISK MANAGEMENT; AMENDING SECTION 67-5774, IDAHO CODE, TO PROVIDE FOR CREATION OF RISK MANAGER IN THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5775, IDAHO CODE, TO PROVIDE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5776, IDAHO CODE, TO REVISE PROCEDURES REGARDING THE RETAINED RISKS ACCOUNT; AMENDING SECTION 67-5777, IDAHO CODE, TO PROVIDE DUTIES FOR THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 67-5778, IDAHO CODE, TO PROVIDE DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5702, Idaho Code, be, and the same is hereby amended to read as follows:

67-5702. DIVISIONS -- APPOINTMENT OF ADMINISTRATORS. The department of administration shall be composed of such divisions as are established or assigned by law, and of such other units as may be administratively established. The director of the department of administration shall appoint an administrator for each division, subject to the approval of the governor.

SECTION 2. That Section 67-5703, Idaho Code, be, and the same is hereby amended to read as follows:

67-5703. ~~DIVISIONS--OF--THE~~ DEPARTMENT OF ADMINISTRATION MAY RECEIVE PAYMENT FOR SERVICES TO FEDERAL, COUNTY AND CITY AGENCIES -- APPROPRIATION. ~~Any-division-of-t~~The department of administration may enter and execute contracts to provide services to any federal, county or city agency within the state of Idaho when justified and requested by such nonstate agency and approved by the state board of examiners. ~~Any--division--of--t~~The department of administration is authorized to charge and receive payment for actual and necessary expenses incurred in providing services to any unit of government under the provisions of this section. Any money received ~~by-any-division-of-the--department of--administration~~ for services provided under the provisions of this section is hereby continually appropriated to the ~~division~~ unit providing the services ~~are~~ as compensation for such actual and necessary expenses.

SECTION 3. That Section 67-5704, Idaho Code, be, and the same is hereby amended to read as follows:

67-5704. ADVANCE PAYMENTS AND INTERACCOUNT TRANSACTIONS. Any

~~division~~ unit of the department of administration providing services to departments of state government as authorized in this chapter may charge and receive payment in advance of performance thereof for a period of time not to exceed the current appropriation of the department requesting such services. Such payments may be used for personnel costs and operating expenditures of the ~~division~~ unit providing the services.

SECTION 4. That Section 67-5745, Idaho Code, be, and the same is hereby amended to read as follows:

67-5745. ~~DIVISION---OF---GENERAL--SERVICES------ADMINISTRATOR----APPOINTMENT~~ ADMINISTRATIVE UNITS -- ADVISORY COUNCILS. (1) ~~There--is hereby--created--within-the-department-of-administration-a-division-of general-services.~~ The director of the department of administration ~~shall--appoint--an-administrator-for-the-division-of-general-services, subject-to-the-approval-of-the--governor.--The--administrator--of--the division--shall--be-exempt-from-the-provisions-of-the-state-merit-system.-The-administrator-of-the-division~~ may employ additional personnel as may be necessary, and may contract for professional services or assistance when necessary or desirable.

(2) An advisory council on information technology is hereby created within the department. The council shall consist of nine (9) members appointed as follows. The governor shall appoint five (5) members who shall serve a term of office at the pleasure of the governor:

(a) The executive officer of the state board of education;

(b) A state agency department director;

(c) A telecommunication company representative; and

(d) Two (2) members at large.

The president pro tempore of the senate shall appoint two (2) members of the senate from different political parties and the speaker of the house of representatives shall appoint two (2) members of the house from different political parties. The legislative members of the advisory council shall serve a term of office at the pleasure of the appointing authority. Members of the council shall be compensated as provided in section 59-509(b), Idaho Code. Legislative members' compensation shall be paid from the legislative account.

The advisory council on information technology shall advise the director of the department of administration in the preparation and execution of plans, projects and programs in the furtherance of the powers and duties of the department.

SECTION 5. That Section 67-5747, Idaho Code, be, and the same is hereby amended to read as follows:

67-5747. POWERS AND DUTIES. (1) The ~~division-of-general-services~~ department of administration is hereby authorized and directed:

(a) (i) To control and approve the ~~additional~~ acquisition and installation of all communications equipment and facilities for all departments and institutions of state government, except as provided in subparagraphs (ii) and (iii) of this subsection;

(ii) To coordinate the acquisition and installation of all

communications equipment and facilities for the institutions of higher education and the elected officers in the executive department;

(iii) To coordinate the acquisition and installation of all communications equipment and facilities for the legislative and judicial departments.

In approving or coordinating the acquisition or installation of ~~additional~~ communications equipment or facilities, the ~~division~~ department shall first consult with and consider the recommendations and advice of the directors or executive heads of the various departments or institutions. Any acquisition or installation of any communications equipment or facilities that is contrary to the department's recommendation, or is not in harmony with the state's overall plan for communications and information sharing, shall be reported in writing to the governor and the legislature.

(b) To receive and hold, upon order of the board of examiners, physical custody and control of such existing communications equipment and facilities utilized by or in the possession of any department or institution, as may be necessary to carry out the purposes of this act.

(c) To provide a system of communications for all departments and institutions of state government. The ~~administrator--of--general services~~ department shall prescribe adequate rules and regulations for the use of any communications equipment and facilities now in use or hereafter made available. Funds received pursuant to this subsection shall be ~~deposited-to-the-trustee-and-benefit-category of-the-division-of-general-services-account-and-are-hereby-continually~~ appropriated ~~to-the-administrator~~ for payment of communication and telephone charges incurred by the various agencies and institutions of state government.

(d) To provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the ~~division~~ department may establish.

(e) To accept federal funds granted by congress or by executive order for all or any of the purposes of this act, as well as gifts and donations from individuals and private organizations or foundations.

~~(f)--The-provisions-of-this-section-shall-not-apply-to--the--Idaho law--enforcement--teletypewriter-system-(ILETS)-as-defined-in-subsection-(4)-of-section-19-5203,-Idaho-Code.~~

SECTION 6. That Section 67-5748, Idaho Code, be, and the same is hereby amended to read as follows:

67-5748. TRANSFER OF FUNDS, EQUIPMENT, FACILITIES, AND EMPLOYEES. In order to provide for the orderly implementation of this chapter and to provide an economical, efficient, and effective system of communications for the state, the board of examiners may order such transfer of appropriated funds, custody and control of equipment and facilities, and employees to the ~~division-of-general-services~~ department of administration as may be necessary to carry out the purposes of this act.

SECTION 7. That Section 67-5760, Idaho Code, be, and the same is hereby amended to read as follows:

67-5760. ~~DIVISION--OF~~ INSURANCE MANAGEMENT ~~---ADMINISTRATOR---APPOINTMENT. There is hereby created within the department of administration a division of--insurance--management.~~ The director of the department of administration ~~shall appoint an administrator for the division of insurance management subject to the approval of the governor. The administrator of the division shall be exempt from the provisions of chapter 53, title 67, Idaho Code. The--administrator--of--the division--may--employ additional personnel as may be necessary and may contract for professional services or assistance--when--necessary--and desirable.~~

~~The administrator of the division of insurance management~~ shall be responsible for life, medical, disability, property, casualty, and other insurance as may be determined to be in the best interest of the state of Idaho by the department of administration. The director may employ additional personnel as may be necessary and may contract for professional or technical services or assistance when necessary and desirable.

SECTION 8. That Section 67-5761, Idaho Code, be, and the same is hereby amended to read as follows:

67-5761. POWERS AND DUTIES -- GROUP INSURANCE. (1) The ~~administrator of the division of insurance management~~ director of the department of administration shall have the authority to:

(a) Establish an advisory committee to be comprised of program participants. The advisory committee may include employee representatives. The ~~administrator~~ director shall consult with the advisory committee in the performance of those duties as enumerated in subsection (2) of this section.

(b) Fix and promulgate rules for determining eligibility of personnel for participation in any group plans.

(c) Determine the nature and extent of needs for group life insurance, group annuities, group disability insurance, and group health care service coverages with respect to personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho and retired personnel, the premiums or prepayments for which are payable in whole or in part from funds of the state. "Disability" insurance includes all personal accident, health, hospital, surgical, and medical coverages, and "health care service" includes all services rendered for maintenance of good health and diagnosis, relief, or treatment of any injury, ailment, or bodily condition.

(d) Determine the types, terms, conditions, and amounts of group insurance, group annuities, or group coverage by health care service organizations, as the case may be, required by such needs.

(e) Negotiate and contract for, and have placed or continued in effect all such insurance and coverages as may reasonably be obtainable from insurers and health care service organizations, as the case may be, duly authorized to transact such business in this

state. The ~~administrator~~ director may negotiate deductibles to any group plan or coverage.

(f) Prepare or otherwise obtain and make available to all personnel affected thereby, printed information concerning all such group plans currently in effect, together with the rules governing eligibility, payment of premium or prepayment where applicable, claims procedures, and other matters designed to facilitate utilization and administration of such plans.

(g) Administer all such group plans on behalf of the policyholder or contract holder, including but not limited to:

(~~1~~i) Enrollment and reporting to the insurer or health care service organization of individuals eligible for coverage and covered under particular policies or contracts, and termination of such enrollment upon termination of eligibility;

(~~2~~ii) Payment of premiums or prepayments for such policies and contracts and accounting for the same;

(~~3~~iii) Establishment of reasonable procedures for handling claims arising under such policies and contracts, and rendering assistance to claimants, as may be required in the presentation and consideration of claims;

(~~4~~iv) Effectuation of changes in such policies and contracts and renewal or termination thereof.

(2) Nothing herein shall be deemed to prohibit any such policy or contract providing coverage also for dependents of personnel under terms and conditions formulated and negotiated by the ~~administrator~~ director. The ~~administrator~~ director shall formulate and negotiate a plan of health care service coverage which includes retired personnel and dependents eligible for a retirement benefit through the Idaho public employee retirement system which benefit equals or exceeds the retiree medical insurance premium in effect for that retiree at the date of retirement. Coverage for retired personnel shall parallel the coverage provided to active state employees to the extent necessary, and shall include a medicare credit for retirees who are covered by medicare. Any increased cost on the health care plan for active employees as a result of such coverage costs shall be paid for by the state and by active state employees in equal shares. Retired personnel shall be responsible for paying their own premiums for any plan of health care service insurance coverage provided pursuant to this section. No policy or contract negotiated by the ~~administrator~~ director which provides coverage or benefits for personnel, dependents of personnel, or retired personnel shall create any vested right or benefit for the retired personnel in retiree group insurance coverages.

SECTION 9. That Section 67-5762, Idaho Code, be, and the same is hereby amended to read as follows:

67-5762. OBJECTIVES AND CONSIDERATIONS. It shall be the ~~administrator's~~ director of the department of administration's objective to procure and maintain on behalf of officers and employees the most adequate group coverages reasonably obtainable for the money available for required premiums and prepayments. In the selection of insurers and health care service organizations to provide such coverages, the ~~administrator~~ director shall give consideration to factors,

other than lowest apparent premium or prepayment, such as risk retention, reserves, extent to which the insurer or organization will facilitate administration, and to its reputation and record for promptness and fairness in the treatment of claims, as well as to its financial dependability.

SECTION 10. That Section 67-5767, Idaho Code, be, and the same is hereby amended to read as follows:

67-5767. ~~ADMINISTRATOR~~ DIRECTOR MAY PROVIDE SERVICE TO SCHOOL DISTRICTS AND OTHER POLITICAL SUBDIVISIONS. (1) Under terms and procedures mutually agreed upon by contract, the ~~administrator~~ director of the department of administration may render the same services with respect to personnel of any school district or other political subdivision of the state of Idaho. The cost of any group insurance, group annuity or health care service coverage so provided and of administration thereof shall be borne by the school district or political subdivision.

(2) Governmental entity for the purpose of this section means any organization composed of units of government of Idaho or organizations funded only by government or government employee contributions or organizations who discharge governmental responsibilities that would otherwise be performed by government. All government entities are deemed to be political subdivisions for the purpose of this act.

SECTION 11. That Section 67-5768, Idaho Code, as amended by Section 97, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

67-5768. NOMINAL POLICYHOLDER -- NO OBLIGATION TO STATE. (1) In policies and contracts procured by the ~~administrator~~ director of the department of administration under this act and covering personnel of any state office, department, division, board, commission, institution, agency and operation, the director of the department of administration shall be designated as the nominal policyholder or contract holder.

(2) No policy or contract shall create, or be deemed to constitute, any financial obligation on the part of the state of Idaho beyond the obligation, to contribute for or upon current premiums or prepayments thereof.

(3) Except as hereinafter provided, information obtained from any employee, dependent or retiree insured under this act shall be subject to disclosure according to chapter 3, title 9, Idaho Code; provided however, that if the affected employee, dependent or retiree waives in writing the right to hold such information confidential, said information may be disclosed.

SECTION 12. That Section 67-5769, Idaho Code, be, and the same is hereby amended to read as follows:

67-5769. INTER-DEPARTMENTAL TRANSACTIONS -- ADMINISTRATIVE CONTRIBUTION -- AMOUNTS -- LIMITS -- REFUNDS -- APPROPRIATION. (1) The ~~administrator~~ director of the department of administration shall

charge each office, department, division, board, commission, institution, agency and operation, personnel of which is currently covered under one or more group plans administered by the ~~administrator~~ director, and receive payment in advance for its properly apportioned share of the cost thereof. To the amount otherwise so found due for payment of premiums and prepayments for coverages, the ~~administrator~~ director shall add a separately stated administrative contribution of such percentage, rate, or proportionate amount as may reasonably be required to pay the costs of maintaining the office of ~~the administrator~~ group insurance, including personnel costs, operating expenditures, and expenditures for capital outlay items. The ~~Administrator~~ director shall allocate the apportioned share of the reasonable costs of administering this act to each participating state unit in the same proportion that the amount of employees of the unit, excluding temporary or part time, bears to the total number of employees, excluding temporary or part time, of all combined units covered by this act.

(2) As to a particular office, department, division, board, commission, institution, agency or operation, such charges and payments shall not exceed the sum of (a) appropriated funds currently available for the purpose, and (b) amounts currently deducted from the salaries and other compensation of covered personnel specifically for the insurance or coverage. On or before the first day of August of each year, the ~~administrator~~ director shall furnish each department with an estimate of the cost of insurance or coverage for the upcoming fiscal year.

(3) Refunds on premiums or prepayments, profit sharing, experience savings and refunds and other contract returns received by the ~~administrator~~ director on account of group policies and group contracts shall be retained by the ~~administrator~~ director and used for application upon future premiums and prepayments as equitably apportioned by the ~~administrator~~ director.

(4) Moneys received by the ~~administrator~~ director under this section shall be deposited to the credit of the group insurance account in the agency asset fund, and are hereby continually appropriated ~~to the administrator~~ for the uses for which charged and received, or as stated in subsection (3) ~~above~~ of this section. Pending such use, such surplus moneys ~~of the administrator~~ shall be invested by the state treasurer in the same manner as provided for under section 67-1210, Idaho Code, with respect to other idle moneys in the state treasury. All interest or other yield on such investments shall be credited to the respective group insurance accounts~~ of the administrator from which derived~~.

SECTION 13. That Section 67-5771, Idaho Code, be, and the same is hereby amended to read as follows:

67-5771. GROUP INSURANCE ACCOUNT CREATED -- ADMINISTRATION -- PERPETUAL APPROPRIATION. There is hereby established in the agency asset fund in the state treasury a special account, the "Group Insurance Account," which shall be administered ~~by the administrator~~ exclusively for the purposes of this act. This account shall consist of all contributions collected pursuant to this act, and all interest earned upon any moneys in the account.

SECTION 14. That Section 67-5772, Idaho Code, be, and the same is hereby amended to read as follows:

67-5772. REMITTANCE OF CONTRIBUTIONS -- COLLECTION OF DELINQUENCIES. (1) Between the first and twentieth day of each month, each employer, or, where the employer's payroll is paid separately by departments, each department of each employer, shall remit to the ~~administrator~~ director of the department of administration all contributions required of it and its employees on the basis of salaries paid by it during the previous month. These remittances shall be accompanied by such reports as required by rules of the ~~administrator~~ director of the department of administration.

(2) If any employer shall fail or refuse to remit any such contributions within thirty (30) days after the date due, the ~~administrator~~ director of the department of administration may certify to the state treasurer the fact of such failure or refusal and the amount of the delinquent contribution or contributions, together with ~~his~~ a request that such amount be set over from funds of the delinquent employer to the credit of the group insurance fund. A copy of such certification and request shall be furnished the delinquent employer.

(3) Within ten (10) days after receipt of such request, the state auditor shall draw his warrant for payment of such amount out of moneys in the state treasury allocated to the use of such employer during the current ~~biennium~~ fiscal year. If such moneys are not so available, the director of the department of administration shall take any legal steps necessary to collect such amount.

SECTION 15. That Section 65-5773, Idaho Code, be, and the same is hereby amended to read as follows:

~~65-5773~~67-5773. POWERS AND DUTIES -- RISK MANAGEMENT. (1) The ~~administrator--of-the-division-of-insurance-management~~ director of the department of administration shall:

(a) Determine the nature and extent of needs for insurance coverages of all kinds, other than life and disability insurances, as to risks and property of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho, the premiums on which are payable in whole or in part from funds of the state.

(b) Determine the character, terms, and amounts of insurance coverages required by such needs.

(c) Within funds available therefor from each respective office, department, division, board, commission, institution, agency or operation with respect to coverage to be provided to it, negotiate for, procure, purchase, and have placed or continued in effect all such insurance coverages and services as may reasonably be obtainable, whether from insurers or brokers duly authorized to transact ~~insurance~~ business in this state ~~or-under-the-surplus-line-law~~.

(d) Administer all such coverages on behalf of the insured, including making and settlement of loss claims arising thereunder. The ~~administrator~~ director, with the advice of the attorney general, may cause suit to be brought with respect to any such coverage or loss.

(e) Within available funds and personnel, make periodic inspection or appraisal of premises, property and risks as to conditions affecting insurability, risk, and premium rate, and submit a written report of each such inspection or appraisal together with recommendations, if any, to the officer, department, or agency in direct charge of such premises, property or risks~~,--and--to--the director-of-the-department-of-administration~~.

(f) Perform such other duties and exercise such other powers as are provided by law.

(g) Establish a risk management advisory committee. The ~~administrator~~ director shall consult with the advisory committee in the performance of those duties enumerated above.

(2) As to all such needs and coverages, the ~~administrator~~ director shall give due consideration to information furnished by and recommendations of any office, department, division, board, commission, institution or agency.

SECTION 16. That Section 67-5774, Idaho Code, be, and the same is hereby amended to read as follows:.

67-5774. POSITION OF RISK MANAGER CREATED -- APPOINTMENT -- EMPLOYMENT OF PERSONNEL. There is hereby created the position of risk manager ~~in--the-division-of-insurance-management~~ in the department of administration. The risk manager shall be selected and retained subject to the provision of chapter 53, title 67, Idaho Code. ~~The-risk manager-shall-be-directly-responsible--to--the--administrator--of--the division--of--insurance--management.~~ The risk manager may, with the agreement of the ~~administrator~~ director, employ and fix the compensation of such additional personnel, and contract for such professional or technical services or assistance, as the manager may deem necessary or desirable for the performance of the duties of the position.

SECTION 17. That Section 67-5775, Idaho Code, be, and the same is hereby amended to read as follows:

67-5775. RISK MANAGEMENT GUIDELINES. In determining need for, form and amount of, procuring and administering insurance coverages, the ~~administrator~~ director of the department of administration shall give due consideration to:

(1) omission of insurance policy coverage as to property and risks as to which insurance and claim administration costs may be disproportionately great in reference to the amount of risk;

(2) ultimate economies possible through use of reasonable deductions;

(3) use of comprehensive coverages and blanket coverages insuring property and risks of two (2) or more offices, departments, divisions, boards, commissions, institutions and agencies;

(4) reliability of and service provided by insurers to be selected as insurance carriers, as well as financial condition and competitive premium rate;

(5) means through which risks may be improved with ultimate savings to the state through reduction in insurance losses and costs.

SECTION 18. That Section 67-5776, Idaho Code, be, and the same is hereby amended to read as follows:

67-5776. RETAINED RISKS ACCOUNT -- PURPOSES -- AMOUNT -- LIMIT -- APPROPRIATION -- INVESTMENT. (1) There is hereby created an account in the agency asset fund in the state treasury to be designated the "retained risk account." The account shall be used solely for payment of premiums, costs of maintaining the operation of ~~a portion of the division of insurance management~~ the risk management office, or upon losses not otherwise insured and suffered by the state as to property and risks which at the time of the loss were eligible for such payment under ~~regulations~~ guidelines theretofore issued by the ~~administrator~~ director of the department of administration.

(2) In addition to moneys, if any, appropriated to the account by the legislature, the ~~administrator~~ director shall deposit with the state treasurer for credit to the retained risk account:

(a) the gross amount of all premiums and surcharges received under section 67-5777, Idaho Code;

(b) all refunds received on account of insurance policies canceled before expiration;

(c) all refunds or returns under experience rating arrangements with insurers;

(d) savings from amounts otherwise appropriated for the purchase of insurance or conduct of the risk management office operation ~~of the division~~;

(e) all net proceeds of the sale of salvage resulting from losses paid out of the retained risk account.

(3) The ~~administrator shall~~ director may from time to time ~~promulgate regulations~~ develop guidelines as to properties~~,~~ and risks ~~and amount--limits~~ eligible for payment out of the retained risk account, and as to making of claim and proof of loss. ~~Before the effective date of any regulation, the administrator shall furnish a copy of all regulations to each office, department, division, board, commission, institution and agency to be affected by the regulation.~~

(4) All moneys placed in the account are hereby perpetually appropriated ~~to the division of insurance management~~ for the purposes of this section. All expenditures from the account shall be paid out in warrants drawn by the state auditor upon presentation of proper vouchers from the director of the department of administration.

(5) Pending such use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the account.

SECTION 19. That Section 67-5777, Idaho Code, be, and the same is hereby amended to read as follows:

67-5777. INTERDEPARTMENTAL TRANSACTIONS -- PURPOSES -- APPROPRIATION. (1) The ~~administrator~~ director of the department of administration shall charge each office, department, division, board, commission, institution, agency and operation for which the ~~administrator~~ department provides insurance coverage and receive payment in advance

for the reasonably apportioned share of the cost incurred. To the amount otherwise so found due for payment of premium to the insurer, the ~~administrator~~ director shall add separately stated surcharges of such percentages, rates, or amounts as may reasonably be required:

(a) to pay the costs of maintaining the operation of the ~~administrator~~ risk unit, including salaries, wages, travel and other current expenses;

(b) to provide for initial funding and maintenance thereafter of the retained risk account, as reasonably apportioned from time to time among those offices, departments, divisions, boards, commissions, institutions, agencies and operations sharing risk coverage by such account. The amount of this surcharge is subject to adjustment as required by subsection (4) of ~~the preceding~~ section 67-5776, Idaho Code.

(2) All such charges and payments shall not exceed the current appropriation or funds available for the purpose of the affected office, department, division, board, commission, institution, agency or operation. On or before the first day of August of each year, the ~~administrator~~ director shall furnish each department with an estimate of the cost of insurance or coverage for the upcoming fiscal year.

(3) Funds received ~~by the administrator~~ under the provisions of this section shall be deposited to the retained risk account and are hereby continually appropriated ~~to the administrator~~ for payment of such salaries, wages, travel, premiums, losses, and other expenses.

SECTION 20. That Section 67-5778, Idaho Code, be, and the same is hereby amended to read as follows:

67-5778. COLLECTION OF DELINQUENT PAYMENTS. (1) If any office, department, division, board, commission, institution, agency, or operation of the government of the state of Idaho shall fail or refuse to remit any such payment as charged by the ~~administrator~~ director of the department of administration within thirty (30) days after the date due when funds have been appropriated, the ~~administrator~~ director may certify to the state treasurer the fact of such failure or refusal and the amount of the delinquent payment, together with the request that such amount be set over from funds of the delinquent department to the credit of the retained risk account. A copy of such certification and request shall be furnished the delinquent department.

(2) Within ten (10) days after receipt of such request, the state auditor shall draw ~~his~~ a warrant for payment of such amount out of moneys in the state treasury allocated to the use of such department during the current fiscal year. If such moneys are not so available, the director, department of administration shall take any legal steps necessary to collect such amount.

SECTION 21. This act shall be in full force and effect on and after July 1, 1993.

Approved March 26, 1993.

CHAPTER 222
(H.B. No. 356, As Amended)

AN ACT

RELATING TO SEXUAL CONTACT WITH AN INMATE; AMENDING CHAPTER 61, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-6110, IDAHO CODE, TO PROVIDE THAT SEXUAL CONTACT WITH AN INMATE BY ANY OFFICER, EMPLOYEE OR AGENT OF A JAIL OR CORRECTIONAL FACILITY SHALL CONSTITUTE A FELONY PUNISHABLE BY LIFE IMPRISONMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 61, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-6110, Idaho Code, and to read as follows:

18-6110. SEXUAL CONTACT WITH AN INMATE. It is a felony for any officer, employee or agent of a jail or correctional facility to have sexual contact with an inmate of such facility. For the purposes of this section "sexual contact" means sexual intercourse, genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.

Any person found guilty of sexual contact with an inmate is punishable by imprisonment in the state prison for a term not to exceed life.

Approved March 26, 1993.

CHAPTER 223
(H.B. No. 375)

AN ACT

RELATING TO WORKER'S COMPENSATION INSURANCE; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-306A, IDAHO CODE, TO ALLOW FOR THE OFFER OF DEDUCTIBLES OPTIONAL TO THE POLICYHOLDER FOR BENEFITS PAYABLE THEREUNDER, TO PROVIDE STANDARDS FOR APPROVAL BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND TO PROVIDE A FORMULA FOR CALCULATION OF THE PREMIUM TAX.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 3, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 72-306A, Idaho Code, and to read as follows:

72-306A. DEDUCTIBLE CONTRACT. (1) A surety issuing a worker's compensation insurance contract may offer deductibles optional to the policyholder for benefits payable thereunder so long as the director

of the department of insurance approves the contract.

(2) The director of the department of insurance shall approve a contract containing such a deductible if, but only if, he finds the following standards have been met:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible;

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards;

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge or premium discount;

(d) Recognition is given to policyholder characteristics, including size, financial capabilities, nature of activities and number of employees;

(e) The policyholder is liable to the surety for the deductible amount in regard to benefits paid for compensable claims;

(f) The surety pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount;

(g) Failure to reimburse deductible amounts by the policyholder to the surety is treated under the policy in the same manner as nonpayment of premiums; and

(h) Losses subject to the deductible shall be reported and recorded as losses for purposes of ratemaking and application of the experience rating plan on the same basis as losses under policies providing first dollar coverage; and

(i) The contract otherwise complies with the statutes of this state.

(3) The premium tax required to be paid pursuant to section 72-523, Idaho Code, shall be calculated based on premiums which would have been charged but for the deductible. For all other taxes and assessments, including residual market assessments, based on premium, the amount of premium shall be determined after application of the deductible.

Approved March 26, 1993.

CHAPTER 224
(H.B. No. 381)

AN ACT

RELATING TO LIMITED LIABILITY COMPANIES; AMENDING TITLE 53, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 6, TITLE 53, IDAHO CODE, TO PROVIDE FOR LIMITED LIABILITY COMPANIES; AND AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3006A, IDAHO CODE, TO PROVIDE FOR CLASSIFICATION AND TAXATION OF A LIMITED LIABILITY COMPANY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 53, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 6, Title 53, Idaho Code, and to read as follows:

CHAPTER 6
IDAHO LIMITED LIABILITY COMPANY ACT

53-601. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Articles of organization" mean articles filed under section 53-607, Idaho Code, and those articles as amended or restated.

(2) "Corporation" means a corporation formed under the laws of any state or foreign country.

(3) "Court" includes every court having jurisdiction in the case.

(4) "Event of dissociation" means an event that causes a person to cease to be a member as provided in section 53-641, Idaho Code.

(5) "Foreign limited liability company" means an organization that is:

(a) An unincorporated association;

(b) Organized under laws of a state other than the laws of this state, or under the laws of any foreign country;

(c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; or

(d) Not required to be registered or organized under any statute of this state other than the provisions of this chapter.

(6) "Limited liability company" or "domestic limited liability company" means an organization formed under the provisions of this chapter.

(7) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under section 53-636, Idaho Code, and charged under section 53-637, Idaho Code.

(8) "Limited partnership" means a limited partnership formed under the laws of any state or foreign country.

(9) "Manager" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with section 53-621, Idaho Code.

(10) "Member" means a person or persons who have been admitted to membership in a limited liability company as provided in section 53-640, Idaho Code, and who have not ceased to be members as provided in section 53-641, Idaho Code.

(11) "Operating agreement" means any agreement, written or oral, among all of the members as to the conduct of the business and affairs of a limited liability company.

(12) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity.

(13) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

53-602. NAME. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "Limited Liability Company" or "Limited Company" or the abbreviation "L.L.C." or "L.C." The word "Limited" may be abbreviated as "Ltd." and the word "Company" may be abbreviated as "Co." If the limited liability company, however, is a professional services limited liability company as defined in section 53-615, Idaho Code, the name of the limited liability company as set forth in the articles of organization must end with the words "Professional Company" or the abbreviation "P.L.L.C."

(2) A limited liability company name may not be the same as or deceptively similar to:

(a) The name of any limited liability company, limited partnership or corporation existing under the laws of this state or authorized to transact business in this state; or

(b) Any name reserved or registered under section 53-603, Idaho Code, the general corporation laws or the Idaho limited partnership act.

(3) The provisions of subsection (2) of this section shall not apply if the applicant files with the secretary of state either of the following:

(a) The written consent of the holder of a reserved or registered name to use a deceptively similar name if one (1) or more words are added, altered or deleted to make the name distinguishable from the reserved or registered name; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

53-603. RESERVATION OF NAME. (1) The exclusive right to use a name may be reserved by:

(a) Any person intending to organize a limited liability company and to adopt that name;

(b) Any limited liability company or any foreign limited liability company registered in this state that intends to adopt that name;

(c) Any foreign limited liability company intending to register in this state and to adopt that name; or

(d) Any person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of four (4) months from and after the date the application is filed with the secretary of state.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of four (4) months each from the date of the renewal under the same conditions that the holder of a reserved corporate name may renew a corporate name reservation.

(4) The right to the exclusive use of a reserved name may be

transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved.

53-604. REGISTERED OFFICE AND REGISTERED AGENT. (1) A limited liability company shall continuously maintain in this state:

(a) A registered office that may, but need not, be the same as its place of business; and

(b) A registered agent for service of process on the limited liability company that is an individual resident of this state, a limited liability company, a foreign limited liability company authorized to transact business in this state or a corporation formed under the laws of or authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by indicating the change on the annual report prescribed in section 53-613, Idaho Code, or by delivering to the secretary of state a statement setting forth:

(a) The name of the limited liability company;

(b) The address of its current registered office;

(c) If the address of its registered office is to be changed, the address to which the registered office is to be changed;

(d) The name and address of its current registered agent;

(e) If its registered agent or the registered agent's address is to be changed, the name and address of its successor registered agent or the registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2) of this section.

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice of resignation, executed in duplicate, to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office. The appointment of the registered agent terminates thirty (30) days after receipt of the notice by the secretary of state or on the appointment of a successor registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required in subsection (3) of this section, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

53-605. NATURE OF BUSINESS. (1) A limited liability company may be organized under this chapter for any lawful purpose. If the purpose for which a limited liability company is organized or its activities make it subject to a special provision of law, the limited liability company shall also comply with that provision.

(2) Except as limited in the articles of organization or operating agreement, the limited liability company shall have and exercise all powers necessary or convenient to effect its purposes including the power to render professional services, if each member of a limited liability company who renders professional services in Idaho is licensed or registered to render those professional services pursuant to applicable Idaho law and section 53-614, Idaho Code.

53-606. SERVICE OF PROCESS. The registered agent appointed by the domestic or foreign limited liability company shall be an agent of such limited liability company upon whom any process, notice or demand required or permitted by law to be served upon the limited liability company may be served.

Whenever the limited liability company shall fail to appoint or maintain a registered agent in this state, or whenever the registered agent cannot with reasonable diligence be found at the registered office, then any process, notice or demand may be served by mailing copies of the process, notice or demand by registered or certified mail to the limited liability company addressed to its registered office and to the members and managers of the limited liability company as shown on the most current annual report filed with the secretary of state, except that if a foreign limited liability company has cancelled its registration in accordance with the provisions of this chapter, then service may be made by mailing copies of the process, notice or demand by registered or certified mail upon the address as shown on the application for cancellation.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

53-607. FORMATION. One (1) or more persons may form a limited liability company by signing articles of organization and delivering the signed articles to the secretary of state for filing. The person or persons who form a limited liability company need not be members of the limited liability company at the time of formation or after formation has occurred.

53-608. ARTICLES OF ORGANIZATION. The articles of organization shall be set forth in a form prescribed by the secretary of state:

(1) A name for the limited liability company that satisfies the requirements of section 53-602, Idaho Code;

(2) The address of the registered office and the name and business, residence, or mailing address of the registered agent required to be maintained by the provisions of section 53-604, Idaho Code;

(3) The latest date certain upon which the limited liability company is to dissolve;

(4) If management of the limited liability company is vested in a

manager or managers, a statement to that effect;

(5) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the initial members of the limited liability company;

(6) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the initial managers of the limited liability company.

53-609. AMENDMENT OF ARTICLES OF ORGANIZATION — RESTATEMENT. (1) The articles of organization of a limited liability company may be amended by filing articles of amendment with the secretary of state. The articles of amendment shall set forth:

(a) The name of the limited liability company;

(b) The date the articles of organization were filed; and

(c) The amendment to the articles of organization.

(2) The articles of organization may be amended in any respect as may be desired, so long as the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment and the amendments are in a form prescribed by the secretary of state.

(3) Articles of organization may be restated at any time. Restated articles of organization shall be filed with the secretary of state and shall be specifically designated as such in the heading, shall state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, its former name and the date of the filing of its articles of organization. The restated articles of the organization shall be in a form prescribed by the secretary of state.

53-610. EXECUTION OF DOCUMENTS. (1) Unless otherwise provided in any other section of this chapter, any document required by the provisions of this chapter to be filed with the secretary of state shall be executed:

(a) If management of the limited liability company is vested in one (1) or more managers, by any manager;

(b) If management of the limited liability company is reserved to the members, by any member;

(c) If the limited liability has not been formed, by the person or persons forming the limited liability company; or

(d) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state beneath or opposite his signature the person's name and the capacity in which he signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document need not be provided to or filed with the secretary of state.

53-611. FILING WITH THE SECRETARY OF STATE. The original signed copy, together with a duplicate copy that may be either a signed, photocopied or conformed copy, of the articles of organization or any other document required to be filed pursuant to this chapter, shall be

delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, it shall, when all required filing fees have been paid:

(1) Endorse on each signed original and duplicate copy the word "filed" and the date and time of the document's acceptance for filing;

(2) Retain the signed original in the secretary of state's files; and

(3) Return the duplicate copy to the person who filed it or to the person's representative.

53-612. EFFECT OF FILING OF ARTICLES OF ORGANIZATION. Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under the provisions of this chapter.

53-613. ANNUAL REPORT OF DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES. (1) Each domestic limited liability company, and each foreign limited liability company authorized to do business in this state, shall file an annual report setting forth:

(a) The name of the limited liability company and the state or country under the laws of which it is organized;

(b) The address of the registered office of the limited liability company in this state, and the name of its registered agent in this state at such address, and in the case of a foreign limited liability company, the address of its principal office in the state or country under the laws of which it is organized;

(c) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the initial members of the limited liability company;

(d) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the initial managers of the limited liability company.

(2) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the limited liability company by a member if management is vested in the members, or by a manager if management is vested in the managers. If the limited liability company is in the hands of a receiver or trustee, it shall be executed on behalf of the limited liability company by such receiver or trustee.

(3) Such annual report of a domestic or foreign limited liability company shall be delivered to the secretary of state between the 1st day of July and the 1st day of November of each year, except that the first annual report of a domestic or foreign limited liability company shall be filed between the 1st day of July and the 1st day of November of the state fiscal year (July 1-June 30) next succeeding the state fiscal year in which its articles of organization were filed with the secretary of state, or when the certificate of registration was issued by the secretary of state, as the case may be. If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so con-

form, he shall promptly return the same to the limited liability company for any necessary corrections.

53-614. INVOLUNTARY CANCELLATION OF ARTICLES OF ORGANIZATION OR REGISTRATION AS A FOREIGN LIMITED LIABILITY COMPANY. (1) A domestic limited liability company or a foreign limited liability company registered in this state is delinquent if it does not file an annual report within the time prescribed under section 53-613, Idaho Code.

(2) If a domestic limited liability company or a foreign limited liability company registered in this state remains delinquent for more than thirty (30) days after the date the annual report is due in accordance with the provisions of section 53-613, Idaho Code, the limited liability company's articles or registration may be involuntarily cancelled by the secretary of state.

(3) The name of the cancelled limited liability company is not available for one (1) year from the date of cancellation for use by any other person transacting business in this state.

(4) Any limited liability company whose articles of organization or registration have been cancelled under the provisions of this section may be reinstated within ten (10) years following cancellation upon application and payment of all penalties and reinstatement fees as determined by the secretary of state in accordance with the provisions of section 53-665, Idaho Code.

(5) A member or manager of a limited liability company does not become personally liable solely by reason of the limited liability company having had its limited liability articles or registration cancelled. Additionally, section 63-3006A, Idaho Code, remains applicable to the limited liability company even if the limited liability company's articles or registration have been cancelled.

(6) A limited liability company that has had its articles of organization or registration cancelled may not maintain any action, suit or proceeding in any court of this state until it has reinstated its certificate or registration following cancellation.

53-615. PROFESSIONAL SERVICE LIMITED LIABILITY COMPANIES. (1) A group of individuals duly licensed or otherwise legally authorized to render the same or allied professional services within this state may organize and become a professional company under the provisions of this chapter for the sole and specific purpose of rendering the same and specific professional service, allied professional services and services ancillary to the professional services. This section shall not be deemed to authorize allied professional services where the laws pertaining to specific professions or the codes of ethics or professional responsibility of any of the professions involved in such a proposed professional company prohibit such a combination of professional services.

(2) No professional company may render professional services in this state except through its managers, members, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. The term "employee" as used in this chapter does not include clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional ser-

vices to the public for which a license or other legal authorization is required.

(3) Nothing contained in this section shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services and to the standards for professional conduct. Any manager, member, agent or employee of a professional company organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the professional company to the person for whom such professional services were being rendered. The professional company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its managers, members, agents or employees while they are engaged on behalf of the professional company in the rendering of professional services.

The relationship of an individual to a professional company organized under the provisions of this chapter, with which such individual is associated, whether as manager, member or employee, shall in no way modify or diminish the jurisdiction over him of the governmental authority or state agency which licensed, certified or registered him for a particular profession.

(4) No professional company may offer membership to or accept as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the company was organized. No member of a professional company shall enter into a voting trust agreement or any other type of agreement vesting another person with the authority to exercise the voting power of his membership.

(5) If any manager, member, agent or employee of a professional company who has been rendering professional services within this state or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall cease to be a member in such professional company in accordance with the provisions of subsection (1)(k) of section 53-641, Idaho Code, and the remaining members of the professional company shall take such action as is required to terminate such membership.

(6) No member of a professional company may sell or transfer his membership in such professional company except to another individual who is eligible to be a member of such professional company and except pursuant to the provisions of section 53-638, Idaho Code.

(7) The provisions of this section shall not be considered as repealing, modifying or restricting the applicable provisions of law regulating the several professions except insofar as such laws conflict with the provisions of this section.

(8) As used in this section:

(a) The term "professional service" means any type of service to the public which can be rendered by a member of any profession within the purview of his profession. For the purpose of this chapter, the professions shall be held to include the practices of

architecture, chiropractic, dentistry, engineering, landscape architecture, law, medicine, nursing, occupational therapy, optometry, physical therapy, podiatry, professional geology, psychology, certified or licensed public accountancy, social work, surveying, and veterinary medicine, and no others.

(b) The term "professional company" means a limited liability company organized under the provisions of this chapter for the sole and specific purpose of rendering professional service and which has as its members only natural persons who themselves are duly licensed or otherwise legally authorized to render one (1) or more of the same professional services as the professional company.

(c) The term "allied professional services" means professional services which are so related in substance that they are frequently offered in conjunction with one another as parts of the same service package to the consumer.

53-616. AGENCY POWER OF MEMBERS AND MANAGERS. (1) Except as provided in subsection (2) of this section or as provided in the articles of organization, every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) No member, solely by reason of being a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a manager binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member which is not apparently for the carrying on in the usual way the business or affairs of the limited liability company does not bind the limited liability company unless authorized in accordance with an operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

53-617. ADMISSION OF MEMBERS AND MANAGERS. (1) Except as provided

in subsection (2) of this section, an admission or representation made by any member concerning the business or affairs of a limited liability company within the scope of his authority as provided for in this chapter is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority as provided for in this chapter is evidence against the limited liability company; and

(b) The admission or representation of any member, acting solely in the capacity of a member, shall not constitute evidence against the limited liability company.

53-618. LIMITED LIABILITY COMPANY CHARGED WITH KNOWLEDGE OF OR NOTICE TO MEMBER OR MANAGER. (1) Except as provided in subsection (2) of this section, notice to any member of any matter relating to the business or affairs of the limited liability company, and the knowledge of the member acting in the particular matter, acquired while a member or known at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(2) If the articles of organization provide that management of the liability company is vested in a manager or managers:

(a) Notice to any manager of any matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or known at the time of becoming a manager, and the knowledge of any other manager who reasonably could and should have communicated the knowledge to the acting manager, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(b) Notice to or knowledge of any member of a limited liability company while the member is acting solely in the capacity of a member is not notice to or knowledge of the limited liability company.

53-619. LIABILITY OF MEMBERS TO THIRD PARTIES. A person who is a member of a limited liability company is not liable, solely by reason of being a member, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.

53-620. PARTIES TO ACTIONS. A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company, except where the object of the proceeding is to

enforce a member's right against or liability to the limited liability company or as otherwise provided in an operating agreement.

53-621. MANAGEMENT. (1) Unless an operating agreement vests management of the limited liability company in a manager or managers, management of the business or affairs of the limited liability company shall be vested in the members. Subject to any provisions in an operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(2) If an operating agreement vests management of the limited liability company in one (1) or more managers, then the manager or managers shall have exclusive power to manage the business and affairs of the limited liability company except to the extent otherwise provided in an operating agreement. Unless otherwise provided in an operating agreement, managers:

(a) Shall be designated, appointed, elected, removed or replaced by a vote, approval or consent of more than one-half (1/2) by numbers of the members;

(b) Need not be members of the limited liability company or natural persons; and

(c) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified.

53-622. DUTIES OF MANAGERS AND MEMBERS. Unless otherwise provided in an operating agreement:

(1) A member or manager shall not be liable, responsible or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company, from:

(a) Any transaction connected with the conduct or winding up of the limited liability company; or

(b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his status as manager or member.

(3) One who is a member of a limited liability company in which management is vested in managers under section 53-621, Idaho Code, and who is not a manager shall have no duties to the limited liability company or to the other members solely by reason of acting in the capacity of a member.

53-623. VOTING. (1) Unless otherwise provided in an operating agreement or this chapter, and subject to subsection (2) of this section, the affirmative vote, approval or consent of more than one-half (1/2) by number of the members, if management of the limited liability company is vested in the members, or of the managers if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business of the limited liability company.

(2) Unless otherwise provided in writing in an operating agreement, the affirmative vote, approval or consent of all members shall be required to:

(a) Amend a written operating agreement; or

(b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business or affairs of the limited liability company or the conduct thereof.

53-624. LIMITATION OF LIABILITY AND INDEMNIFICATION OF MEMBERS AND MANAGERS. An operating agreement may:

(1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in section 53-622, Idaho Code; and

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager.

53-625. RECORDS AND INFORMATION. (1) Unless otherwise provided in writing in an operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) A copy of the articles of organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the articles of amendment have been executed;

(c) Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state and local tax returns for the period;

(d) Copies of any effective written operating agreements, and all amendments thereto, and copies of any written operating agreements no longer in effect;

(e) Unless contained in writing in an operating agreement:

(i) A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made by each member;

(ii) A writing stating events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and

(iii) Other writings prepared pursuant to a requirement, if any, in an operating agreement.

(2) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, wherever the record is located.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information of all things affecting the business or affairs of the limited liability company to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company.

53-626. CONTRIBUTIONS TO CAPITAL. A limited liability company interest may be issued in exchange for cash, property, services rendered, guarantee of an obligation of the limited liability company, a promissory note or other obligation to contribute cash or property or to perform services, or other valuable consideration.

53-627. LIABILITY FOR CONTRIBUTIONS. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set forth in a writing signed by the member.

(2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or other reason.

(3) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(4) Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

53-628. SHARING OF PROFITS. Unless otherwise provided in writing in an operating agreement, each member shall be repaid that member's contributions to capital and share equally in the profits and assets remaining after all liabilities, including those to members, are satisfied.

53-629. SHARING OF INTERIM DISTRIBUTIONS. Except as otherwise provided in sections 53-630 and 53-646, Idaho Code, distributions of cash or other assets of a limited liability company shall be shared among the members and among classes of members in the manner provided in writing in an operating agreement. If an operating agreement does

not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement or at the times determined by the members or managers pursuant to section 53-623, Idaho Code.

53-630. DISTRIBUTIONS ON AN EVENT OF DISSOCIATION. If an operating agreement does not provide the amount of or a method for determining the distribution to a dissociating member, the member shall receive within a reasonable time after dissociation the fair value of the member's interest in the limited liability company as of the date of dissociation based upon the member's right to share in distributions from the limited liability company.

53-631. DISTRIBUTION IN KIND. Unless otherwise provided in an operating agreement:

(1) A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the limited liability company in any form other than cash; and

(2) A member may not be compelled to accept from the limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage that the member would have shared in a cash distribution equal to the value of the property at the time of distribution.

53-632. RIGHT TO DISTRIBUTION. At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

53-633. OWNERSHIP OF LIMITED LIABILITY COMPANY PROPERTY. (1) Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.

(2) Property may be acquired, held and conveyed in the name of the limited liability company. Any interest in real property may be acquired in the name of the limited liability company, and title to any interest so acquired shall vest in the limited liability company rather than in the members individually.

53-634. TRANSFER OF PROPERTY. (1) Except as provided in subsection (5) of this section, property of the limited liability company held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Property of the limited liability company that is held in the name of one (1) or more members or managers with an indication in the instrument transferring the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

(3) Property transferred under subsections (1) and (2) of this section may be recovered by the limited liability company if it proves that the execution of the instrument of transfer did not bind the limited liability company under section 53-616, Idaho Code, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Property of the limited liability company held in the name of one (1) or more persons other than the limited liability company without an indication in the instrument transferring to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of the limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) A member, solely by reason of being a member, shall not have authority to transfer property of the limited liability company.

53-635. NATURE OF LIMITED LIABILITY COMPANY INTEREST. A limited liability company interest is personal property.

53-636. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTEREST. (1) Unless otherwise provided in writing in an operating agreement:

(a) A limited liability company interest is assignable in whole or in part;

(b) An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(c) An assignment of a limited liability company interest does not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(d) Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to subsection (1)(c)(ii) of section 53-641, Idaho Code;

(e) Until an assignee of a limited liability company interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(f) The assignor of a limited liability company interest is not released from his liability as a member solely as a result of the assignment.

(2) An operating agreement may provide that a member's limited

liability company interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the assignment or transfer of any interest represented by the certificate.

(3) Unless otherwise provided in an operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of the limited liability company interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

53-637. RIGHTS OF JUDGMENT CREDITOR. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's limited liability company interest with payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's limited liability company interest. The provisions of this chapter do not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

53-638. RIGHT OF ASSIGNEE TO BECOME A MEMBER. (1) Unless otherwise provided in writing in an operating agreement, an assignee of a limited liability company interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of such specification, consent shall be evidenced by a written instrument, dated and signed by the member.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement and the provisions of this chapter. An assignee who becomes a member also is liable for any obligations of the assignor to make contributions under section 53-627, Idaho Code. However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time he became a member and which could not be ascertained from any written records of the limited liability company kept pursuant to section 53-625, Idaho Code.

(3) Unless otherwise provided in writing in an operating agreement, an assignor is not released from his liability to the limited liability company under section 53-627, Idaho Code, whether or not an assignee of a limited liability company interest becomes a member.

(4) Unless otherwise provided in writing in an operating agreement, a member who assigns his entire limited liability company interest ceases to be a member or to have the power to exercise any rights of a member when the assignee becomes a member with respect to the entire assigned interest.

53-639. POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or property, the member's executor, administrator, guardian, conservator or other legal representative shall have all of the rights of an

assignee of the member's interest.

53-640. ADMISSION OF MEMBERS. (1) Subject to subsection (2) of this section, a person may become a member in a limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, upon compliance with an operating agreement or, if an operating agreement does not so provide in writing, upon the written consent of all members; and

(b) In the case of an assignee of a limited liability company interest, as provided in section 53-638, Idaho Code.

(2) The effective time of admission of a member to a limited liability company shall be the later of:

(a) The date the limited liability company is formed; or

(b) The time provided in an operating agreement or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

53-641. EVENTS OF DISSOCIATION. (1) A person ceases to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) This member ceases to be a member of the limited liability company as provided in section 53-638, Idaho Code;

(c) The member is removed as a member:

(i) In accordance with an operating agreement; or

(ii) Unless otherwise provided in writing in an operating agreement, when the member assigns all of his interest in the limited liability company, by an affirmative vote of a majority of the members who have not assigned their interests;

(d) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, the member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces to the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties;

(e) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, if within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the appointment without his consent or acquiescence of a

trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or if within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;

(f) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is an individual;

(i) The member's death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his person or estate;

(g) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(h) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

(i) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or forfeiture of its corporate powers or right to do business;

(j) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company; or

(k) In the case of a professional services limited liability company, restrictions or limitations are placed upon a member's ability to continue to render professional services as described in section 53-614(5), Idaho Code.

(2) The members may provide in writing in an operating agreement for other events the occurrence of which shall result in a person ceasing to be a member of the limited liability company.

(3) Unless an operating agreement provides in writing that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days' written notice to the other members, or such other notice as is provided for in writing in an operating agreement. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement or as a result of the wrongful conduct, including the reasonable costs of obtaining replacement of the services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of a limited liability company for a definite term or par-

ticular undertaking, a withdrawal by a member before the expiration of that term is a breach of the operating agreement.

53-642. DISSOLUTION. A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time or upon the occurrence of events specified in writing in the articles of organization or an operating agreement;

(2) The written consent of all members;

(3) An event of dissociation of a member, unless:

(a) The business of the limited liability company is continued by the consent of all the remaining members on or before the 90th day following the occurrence of any such event; or

(b) Otherwise provided in writing in an operating agreement; or

(4) Entry of a decree of judicial dissolution under section 53-643, Idaho Code.

53-643. JUDICIAL DISSOLUTION. On application by or for a member, the district court may decree dissolution of a limited liability company when it is established:

(1) That the managers or members are deadlocked in the management of the limited liability company's affairs, and that irreparable injury to the limited liability company is being suffered or is threatened by reason thereof; or

(2) That the acts of the managers or members in control of the limited liability company are illegal, oppressive or fraudulent and that irreparable injury to the limited liability company is being suffered or is threatened by reason thereof.

53-644. WINDING UP. Unless otherwise provided in writing in an operating agreement:

(1) The business or affairs of the limited liability company may be wound up:

(a) By the members or managers who have authority pursuant to section 53-621, Idaho Code, to manage the limited liability company prior to dissolution; or

(b) If one (1) or more of such members or managers have engaged in wrongful conduct, or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

(a) Prosecute and defend suits;

(b) Settle and close the business of the limited liability company;

(c) Dispose of and transfer the property of the limited liability company;

(d) Discharge the liabilities of the limited liability company; and

(e) Distribute to the members any remaining assets of the limited liability company.

53-645. AGENCY POWER OF MANAGERS OR MEMBERS AFTER DISSOLUTION. (1) Except as provided in subsections (3), (4) and (5) of this section, after dissolution of the limited liability company, each of the members having authority to wind up the limited liability company's business and affairs can bind the limited liability company:

(a) By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of subsection (1)(b) of this section.

(3) An act of a member which is not binding on the limited liability company pursuant to subsection (1) of this section is binding if it is otherwise authorized by the limited liability company.

(4) An act of a member which would be binding under subsection (1) of this section or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager shall have the authority of a member provided for in subsection (1) of this section, and no member shall have such authority if the member is acting solely in the capacity of a member.

53-646. DISTRIBUTION OF ASSETS. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;

(2) Unless otherwise provided in writing in an operating agreement, to members or former members in satisfaction of liabilities for distributions under sections 53-629 and 53-630, Idaho Code; and

(3) Unless otherwise provided in writing in an operating agreement, to members and former members first for the return of their contributions and second in proportion to the members' respective rights to share in distributions from the limited liability company prior to dissolution.

53-647. ARTICLES OF DISSOLUTION. After the dissolution of the limited liability company pursuant to section 53-642, Idaho Code, the limited liability company shall file articles of dissolution with the secretary of state which set forth:

(1) The name of the limited liability company;

(2) The date of filing of its articles of organization;

(3) The reason for filing the articles of dissolution; and

(4) Any other information the members or managers filing the certificate shall deem proper.

53-648. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

(1) Upon dissolution, a limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to section 53-647, Idaho Code, and following the procedures described in this section.

(2) The limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days after the later of the date of the written notice or the filing of articles of dissolution pursuant to section 53-647, Idaho Code, by which the limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the limited liability company is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the limited liability company by the deadline;

(b) If a claimant whose claim was rejected by the limited liability company does not commence a proceeding to enforce the claim within ninety (90) days after the date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

53-649. UNKNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY. A claim not barred under section 53-648, Idaho Code, may be enforced:

(1) Against the limited liability company, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the limited liability company to the extent of his pro rata share of the claim or the assets of the limited liability company distributed to him in liquidation, whichever is less, but a member's total liability for all claims under the provisions of this section may not exceed the total amount of assets distributed to him.

53-650. LAW GOVERNING FOREIGN LIMITED LIABILITY COMPANIES. Subject to the constitution of this state, the laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members, except that professional companies rendering services in this state shall be subject to the laws of this state and the code of ethics or professional responsibility which are applicable to the professions in which such professional companies are rendering services in this state. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

53-651. REGISTRATION. Before transacting business in this state, a foreign limited liability company shall register with the secretary

of state by submitting to the secretary of state an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall be prescribed by the secretary of state and set forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

(2) The state or other jurisdiction where formed, and date of its formation;

(3) The name and address of a registered agent for service of process required to be maintained by the provisions of section 53-604, Idaho Code;

(4) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company; and

(5) The application for registration of a foreign limited liability company shall be accompanied by a certificate from the filing officer in the jurisdiction of creation evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in section 53-602(5), Idaho Code.

53-652. ISSUANCE OF REGISTRATION. If the secretary of state finds that an application for registration conforms to the provisions of this article and all requisite fees have been paid, the secretary shall:

(1) Endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(2) Retain the signed original in the secretary of state's files; and

(3) Return the duplicate copy to the person who filed it or the person's representative.

53-653. NAME OF FOREIGN LIMITED LIABILITY COMPANY. No certificate of registration shall be issued to a foreign limited liability company unless the name of such company satisfies the requirements of section 53-602, Idaho Code. If the name under which a foreign limited liability company is registered in the jurisdiction of its formation does not satisfy the requirements of section 53-602, Idaho Code, to obtain or maintain a certificate of registration the foreign limited liability company may use a designated name that is available, and which satisfies the requirements of section 53-602, Idaho Code.

53-654. AMENDMENTS. (1) The application for registration of a foreign limited liability company is amended by filing a notice of amendment with the secretary of state signed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The notice of amendment shall be in a form prescribed by the secretary of state and set forth:

(a) The name of the foreign limited liability company;

(b) The date the original application for registration was filed; and

(c) The amendment to the application for registration.

(2) The application for registration may be amended in any way, provided that the application for registration as amended contains only provisions that may be lawfully contained in an application for registration at the time of the amendment.

53-655. CANCELLATION OF REGISTRATION. (1) A foreign limited liability company authorized to transact business in this state may cancel its registration upon procuring from the secretary of state a certificate of cancellation. In order to procure such certificate, the foreign limited liability company shall deliver to the secretary of state an application for cancellation, which shall set forth:

(a) The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is formed;

(b) That the foreign limited liability company is not transacting business in this state;

(c) That the foreign limited liability company surrenders its certificate of registration to transact business in this state;

(d) That the foreign limited liability company revokes the authority of its registered agent service of process in this state and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such limited liability by service thereon in the manner provided in section 53-606, Idaho Code;

(e) A post-office address to which a copy of any process against the limited liability company may be served on it pursuant to the provisions of section 53-606, Idaho Code.

(2) The application for cancellation shall be in the form and manner designated by the secretary of state and shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

53-656. TRANSACTION OF BUSINESS WITHOUT REGISTRATION. (1) A foreign limited liability company transacting business in this state may not maintain an action, suit, or proceeding in a court of this state until it has registered in this state.

(2) The failure of a foreign limited liability company to register in this state does not:

(a) Impair the validity of any contract or act of the foreign limited liability company;

(b) Affect the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(c) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of this state.

(3) A foreign limited liability company which transacts business in this state without registration shall be liable to the state for

the years or parts thereof during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by the provisions of this chapter upon that foreign limited liability company had it duly registered, and all penalties imposed by the provisions of this chapter. The attorney general may bring proceedings to recover all amounts due this state under the provisions of this section.

(4) A foreign limited liability company which transacts business in this state without registration shall be subject to a civil penalty, payable to the state, not to exceed five thousand dollars ($5,000).

(5) The civil penalty set forth in subsection (4) of this section may be recovered in an action brought within a court by the attorney general upon a finding by the court that a foreign limited liability company has transacted business in this state in violation of the provisions of this chapter. The court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transactions of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs which the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

(6) A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely because the limited liability company transacted business in this state without registration.

(7) Foreign limited liability companies transacting business in Idaho prior to the effective date of this chapter, may register with the secretary of state in accordance with the provisions of section 53-651, Idaho Code, within two (2) months from the effective date of this chapter without any penalty under the provisions of section 53-656(4), Idaho Code.

53-657. TRANSACTIONS NOT CONSTITUTING TRANSACTING BUSINESS. (1) The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter.

(a) Maintaining or defending any action or suit or any administrative or arbitration proceedings or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or appointing and maintaining trustees or depositories with respect to those securities or interests;

(e) Effecting sales through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance outside this state before they become contracts;

(g) Creating as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;

(h) Securing or collecting debts or enforcing any rights in property securing the same. The provisions of this subsection shall not be construed to allow any person or limited liability company to act in a manner contrary to the provisions of chapter 22, title 26, Idaho Code;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of a number of repeated transactions of a like nature; or

(k) Transacting any business in interstate commerce.

(2) The foreign limited liability company shall not be considered to be transacting business solely because it:

(a) Owns a controlling interest in a corporation that is transacting business;

(b) Is a limited partner of a limited partnership that is transacting business; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business.

(3) The provisions of this section do not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

53-658. SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY. Suit may be brought by or against a limited liability company in its own name.

53-659. AUTHORITY TO SUE ON BEHALF OF LIMITED LIABILITY COMPANY. Unless otherwise provided in an operating agreement, a suit on behalf of the limited liability company may be brought only in the name of the limited liability company by:

(1) One (1) or more members of a limited liability company, whether or not an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to sue by the vote of more than one-half (1/2) by number of the members eligible to vote thereon, unless the vote of all members shall be required pursuant to the provisions of section 53-623, Idaho Code, provided that in determining the vote required under the provisions of section 53-623, Idaho Code, the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or

(2) One (1) or more managers of a limited liability company, if an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to do so by the vote required pursuant to the provisions of section 53-623, Idaho Code, of the members eligible to vote thereon, provided that in determining such required vote, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

53-660. EFFECT OF LACK OF AUTHORITY TO SUE. The lack of authority of a member or manager to sue on behalf of the limited liability company may not be asserted as a defense to an action by the limited liability company or by the limited liability company as a basis for bringing a subsequent suit on the same cause of action.

53-661. MERGER OR CONSOLIDATION. (1) Unless otherwise provided in writing in an operating agreement, and subject to any law applicable to business entities other than limited liability companies, one (1) or more limited liability companies may merge or consolidate with or into one (1) or more other business entities with the limited liability company or other business entity as the merger or consolidation agreement shall provide being the surviving or resulting limited liability company or other business entity.

(2) Rights or securities of or interests in a business entity that is a party to the merger or consolidation may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving or resulting business entity or of any other business entity.

(3) As used in this section, "business entity" means a domestic or foreign limited liability company or corporation.

53-662. APPROVAL OF MERGER OR CONSOLIDATION. (1) Unless otherwise provided in writing in an operating agreement, a limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation agreement by the consent of more than one-half (1/2) by number of the members.

(2) Each corporation and foreign limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation in the manner and by the vote required by the laws applicable to such business entity.

(3) Each business entity that is a party to the merger or consolidation shall have such rights to abandon the merger as are provided for in the merger or consolidation agreement or in the laws applicable to the business entity.

53-663. ARTICLES OF MERGER OR CONSOLIDATION. (1) The business entity surviving or resulting from the merger or consolidation shall deliver to the secretary of state articles of merger or consolidation executed by each constituent entity setting forth:

(a) The name and jurisdiction of formation or organization of each business entity which is to merge or consolidate;

(b) That an agreement of merger or consolidation has been approved and executed by each business entity which is a party to the merger or consolidation;

(c) The name of the surviving or resulting business entity;

(d) The future effective date of the merger or consolidation, which shall be a date or time certain not more than thirty (30) days subsequent to the date of filing, if it is not to be effective upon the filing of the articles of merger or consolidation;

(e) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting business entity, and the address of that place of business;

(f) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting business entity, on request and without cost, to any person holding an interest in any business entity which is to merge or consolidate; and

(g) If the surviving or resulting entity is not a business entity organized under the laws of this state, a statement that such surviving or resulting business entity:

(i) Agrees that it may be served with process in this state in any proceeding for enforcement of any obligation of any business entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving business entity or the new business entity arising from the merger or consolidation; and

(ii) Appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving business entity or the new business entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

(2) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the articles of merger or consolidation.

(3) The articles of merger or consolidation shall be executed by a limited liability company that is a party to the merger or consolidation in the manner provided for in section 53-610, Idaho Code, and shall be filed with the secretary of state in the manner provided for in section 53-611, Idaho Code.

(4) An agreement of merger or consolidation approved in accordance with the provisions of section 53-662, Idaho Code, may effect any amendment to an operating agreement or effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. An approved agreement of merger or consolidation may also provide that the operating agreement of any constituent limited liability company to the merger or consolidation, including a limited liability company formed for the purpose of consummating a merger or consolidation, shall be the operating agreement of the surviving or resulting limited liability company. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

(5) In the case of a merger, if the surviving entity is a limited liability company, the articles of organization shall be deemed to be amended to the extent, if any, that changes in its articles of organization are stated in the agreement of merger; and in the case of consolidation, the articles of incorporation or organization of the resulting business entity shall be included in or annexed to the articles of consolidation.

53-664. EFFECTS OF MERGER OR CONSOLIDATION. A merger or consolidation has the following effects:

(1) The business entities that are parties to the merger or consolidation agreement shall be a single entity, which, in the case of a merger shall be the entity designated in the plan of merger as the surviving entity, and, in the case of a consolidation, shall be the new entity provided for in the plan of consolidation;

(2) Each party to the merger or consolidation agreement, except the surviving entity or the new entity, shall cease to exist;

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities and powers of each constituent entity and shall be subject to all the restrictions, disabilities and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities and duties are applicable to the type of business entity that is the surviving entity or the new entity;

(4) All property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other causes in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;

(5) The title to all real estate and any interest therein, vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving entity or the new entity shall thenceforth be liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place, or the surviving entity or the new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;

(8) The interests in a limited liability company or shares or other interests in a corporation that are to be converted or exchanged into interests, shares or other securities, cash, obligations or other property under the terms of the merger or consolidation agreement are so converted, and the former holders thereof are entitled only to the rights provided in the merger or consolidation agreement or the rights otherwise provided by law.

53-665. FILING, SERVICE, AND COPYING FEES. The secretary of state shall charge and collect:

(1) For filing the original articles of organization, a fee of one hundred dollars ($100) if typed and completely included on the standard form prescribed by the secretary of state or one hundred twenty dollars ($120) if not typed or if attachments are included;

(2) For filing notice of amendment and issuing a certificate of amendment, a fee of thirty dollars ($30.00);

(3) For filing articles of merger or consolidation and issuing a certificate of merger or consolidation, a fee of thirty dollars

($30.00);

(4) For filing articles of dissolution and issuing a certificate of dissolution, a fee of thirty dollars ($30.00);

(5) For accepting an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of twenty dollars ($20.00);

(6) For issuing a certificate of registration to a foreign limited liability company, a fee of one hundred dollars ($100) if typed and completely included on the standard form prescribed by the secretary of state or one hundred twenty dollars ($120) if not typed or if attachments are included; and

(7) Reinstatement fees for involuntary suspension or cancellation of a limited liability company's articles of organization or registration of ten dollars ($10.00) for each year or part of a year of suspension and/or cancellation and ten dollars ($10.00) for a certificate.

53-666. EXECUTION BY JUDICIAL ACT. Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this act may petition the district court in the county where the registered office of the limited liability company is located to direct the execution and filing of the articles or other document. If the court finds that it is proper for the articles or other documents to be executed and filed and that there has been failure or refusal to execute and file such documents, it shall order the secretary of state to file the appropriate articles or other documents.

53-667. DEFINITION OF KNOWLEDGE. (1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) States the fact to such person; or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

53-668. RULES OF CONSTRUCTION. (1) It is intended that the provisions of this chapter give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(2) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter.

(3) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to the provisions of this chapter.

(4) Neither the provisions of this chapter nor any amendments thereto shall be construed so as to impair the obligations of any contract existing when this law or any amendments thereto go into effect, nor to affect any action or proceedings begun or right accrued before this law or any amendments thereto take effect.

53-669. JURISDICTION OF THE DISTRICT COURTS. The district courts shall have jurisdiction to enforce the provisions of this chapter.

53-670. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application. To this end, the provisions of this chapter are severable.

53-671. INTERSTATE APPLICATION. A limited liability company organized and existing under the provisions of this chapter may conduct its business, carry on its operations and have and exercise the powers granted by the provisions of this chapter in any state or foreign country.

53-672. GOVERNING LAW. (1) The liability of members, managers, employees and agents of a limited liability company organized and existing under the provisions of this chapter shall at all times be governed by the provisions of this chapter and the laws of this state.

(2) If a conflict arises between the law of this state and the laws of any other jurisdiction with regard to the liability of a member, manager, employee or agent of a limited liability company organized and existing under the provisions of this chapter for the debts, obligations and liabilities of the limited liability company, or for the acts or omissions of another member, manager, employee or agent of the limited liability company, the provisions of this chapter and the laws of this state shall govern in determining such liability.

SECTION 2. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3006A, Idaho Code, and to read as follows:

63-3006A. LIMITED LIABILITY COMPANY -- CLASSIFICATION AND TAXATION. Notwithstanding the provisions of section 63-3006, Idaho Code, for the purposes of chapter 30, title 63, Idaho Code, a limited liability company as defined in subsection (5) or (6) of section 53-601, Idaho Code, shall be classified as a partnership, corporation, unincorporated association or otherwise pursuant to the provisions of the internal revenue code. A limited liability company that is classified as a partnership pursuant to the internal revenue code shall be treated as a partnership for purposes of chapter 30, title 63, Idaho Code. A limited liability company that is classified other than a partnership pursuant to the internal revenue code shall be treated for purposes of chapter 30, title 63, Idaho Code, in accordance with its classification.

Approved March 26, 1993.

CHAPTER 225
(H.B. No. 394)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 1994; AND TRANSFERRING MONEYS TO THE GENERAL FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is legislative intent that the expenditures for the Public Utilities Commission not exceed the following amount for the period July 1, 1993, through June 30, 1994:

FOR:	
Personnel Costs	$2,326,300
Operating Expenditures	1,108,800
Capital Outlay	69,800
TOTAL	$3,504,900
FROM:	
General Fund	$ 208,800
State Regulatory Fund	3,296,100
TOTAL	$3,504,900

SECTION 2. There is hereby appropriated to the Public Utilities Commission the following amount, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATION:				
FROM:				
General Fund	$ 208,800			$ 208,800
State Regulatory Fund	563,700	$ 147,700	$11,500	722,900
TOTAL	$ 772,500	$ 147,700	$11,500	$ 931,700
B. UTILITIES REGULATION:				
FROM:				
State Regulatory Fund	$1,194,600	$ 755,900	$40,300	$1,990,800
C. REGULATED CARRIERS:				
FROM:				
State Regulatory Fund	$ 359,200	$ 205,200	$18,000	$ 582,400
GRAND TOTAL	$2,326,300	$1,108,800	$69,800	$3,504,900

SECTION 3. Notwithstanding any other provisions of law, there is hereby appropriated from the State Regulatory Fund and transferred to the General Fund an amount equal to the General Fund expenditures of

the Public Utilities Commission for the period July 1, 1993, through June 30, 1994.

Approved March 26, 1993.

CHAPTER 226
(H.B. No. 395)

AN ACT

RELATING TO THE COMPENSATION SCHEDULE FOR STATE EMPLOYEES; AMENDING SECTION 67-5309C, IDAHO CODE, TO ADJUST THE COMPENSATION SCHEDULE, AND TO CORRECT A CODIFIER'S ERROR; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5309C, Idaho Code, be, and the same is hereby amended to read as follows:

67-5309C. SALARY SCHEDULE AND MERIT INCREASES. (a) The following schedule is adopted as the hourly salary schedule for all positions classified pursuant to chapter 53, title 67, Idaho Code.

~~(a) The following schedule is adopted as the hourly salary schedule for all positions classified pursuant to chapter 53, title 67, Idaho Code.~~

STATE OF IDAHO
COMPENSATION SCHEDULE
HOURLY BASE RATES

Pay Grade	Step A--	Step B--	Step C--	Step D--	Step E--	Step F--	Pay Grade
~~12~~	~~$3.68~~	~~$3.78~~	~~$3.87~~	~~$3.97~~	~~$4.06~~	~~$4.16~~	~~12~~
~~13~~	~~3.87~~	~~3.97~~	~~4.06~~	~~4.16~~	~~4.26~~	~~4.37~~	~~13~~
~~14~~	~~4.06~~	~~4.16~~	~~4.26~~	~~4.37~~	~~4.47~~	~~4.58~~	~~14~~
~~15~~	~~4.26~~	~~4.37~~	~~4.47~~	~~4.58~~	~~4.69~~	~~4.81~~	~~15~~
~~16~~	~~4.47~~	~~4.58~~	~~4.69~~	~~4.81~~	~~4.92~~	~~5.04~~	~~16~~
~~17~~	~~4.69~~	~~4.81~~	~~4.92~~	~~5.04~~	~~5.16~~	~~5.30~~	~~17~~
~~18~~	~~4.92~~	~~5.04~~	~~5.16~~	~~5.30~~	~~5.43~~	~~5.56~~	~~18~~
~~19~~	~~5.16~~	~~5.30~~	~~5.43~~	~~5.56~~	~~5.70~~	~~5.84~~	~~19~~
~~20~~	~~5.43~~	~~5.56~~	~~5.70~~	~~5.84~~	~~5.98~~	~~6.13~~	~~20~~
~~21~~	~~5.70~~	~~5.84~~	~~5.98~~	~~6.13~~	~~6.28~~	~~6.44~~	~~21~~
~~22~~	~~5.98~~	~~6.13~~	~~6.28~~	~~6.44~~	~~6.59~~	~~6.75~~	~~22~~
~~23~~	~~6.28~~	~~6.44~~	~~6.59~~	~~6.75~~	~~6.93~~	~~7.10~~	~~23~~
~~24~~	~~6.59~~	~~6.75~~	~~6.93~~	~~7.10~~	~~7.27~~	~~7.45~~	~~24~~
~~25~~	~~6.93~~	~~7.10~~	~~7.27~~	~~7.45~~	~~7.63~~	~~7.82~~	~~25~~
~~26~~	~~7.27~~	~~7.45~~	~~7.63~~	~~7.82~~	~~8.01~~	~~8.21~~	~~26~~
~~27~~	~~7.63~~	~~7.82~~	~~8.01~~	~~8.21~~	~~8.42~~	~~8.63~~	~~27~~
~~28~~	~~8.01~~	~~8.21~~	~~8.42~~	~~8.63~~	~~8.84~~	~~9.06~~	~~28~~
~~29~~	~~8.42~~	~~8.63~~	~~8.84~~	~~9.06~~	~~9.28~~	~~9.51~~	~~29~~
~~30~~	~~8.84~~	~~9.06~~	~~9.28~~	~~9.51~~	~~9.74~~	~~9.99~~	~~30~~
~~31~~	~~9.28~~	~~9.51~~	~~9.74~~	~~9.99~~	~~10.23~~	~~10.48~~	~~31~~
~~32~~	~~9.74~~	~~9.99~~	~~10.23~~	~~10.48~~	~~10.74~~	~~11.01~~	~~32~~

33	10.23	10.40	10.74	11.01	11.20	11.56	33
34	10.74	11.01	11.20	11.56	11.04	12.13	34
35	11.20	11.56	11.04	12.13	12.43	12.74	35
36	11.04	12.13	12.43	12.74	13.06	13.30	36
37	12.43	12.74	13.06	13.30	13.71	14.05	37
38	13.06	13.30	13.71	14.05	14.40	14.76	38
39	13.71	14.05	14.40	14.76	15.12	15.50	39
40	14.40	14.76	15.12	15.50	15.00	16.27	40
41	15.12	15.50	15.00	16.27	16.67	17.00	41
42	15.00	16.27	16.67	17.00	17.51	17.94	42
43	16.67	17.00	17.51	17.94	18.30	18.05	43
44	17.51	17.94	18.30	18.05	19.30	19.70	44
45	18.30	18.05	19.30	19.70	20.26	20.77	45
46	19.30	19.70	20.26	20.77	21.20	21.02	46
47	20.26	20.77	21.20	21.02	22.35	22.91	47
48	21.20	21.02	22.35	22.91	23.47	24.05	48
49	22.35	22.91	23.47	24.05	24.64	25.26	49
50	23.47	24.05	24.64	25.26	25.87	26.52	50
51	24.64	25.26	25.87	26.52	27.17	27.05	51
52	25.87	26.52	27.17	27.05	28.53	29.24	52
53	27.17	27.05	28.53	29.24	29.96	30.70	53
54	28.53	29.24	29.96	30.70	31.46	32.24	54
55	29.96	30.70	31.46	32.24	33.03	33.06	55
56	31.46	32.24	33.03	33.06	34.60	35.55	56
57	33.03	33.06	34.60	35.55	36.41	37.32	57
58	34.60	35.55	36.41	37.32	38.23	39.19	58
59	36.41	37.32	38.23	39.19	40.15	41.15	59
60	38.23	39.19	40.15	41.15	42.15	43.21	60

Pay Grade	Step G--	Step H--	Step I--	Step J--	Step K--	Step L--	Step M--	Pay Grade
12	$4.26	$4.37	$4.47	$4.58	$4.69	$4.81	$4.92	12
13	-4.47	-4.58	-4.69	-4.81	-4.92	-5.04	-5.16	13
14	-4.69	-4.81	-4.92	-5.04	-5.16	-5.30	-5.43	14
15	-4.92	-5.04	-5.16	-5.30	-5.43	-5.56	-5.70	15
16	-5.16	-5.30	-5.43	-5.56	-5.70	-5.84	-5.98	16
17	-5.43	-5.56	-5.70	-5.84	-5.98	-6.13	-6.28	17
18	-5.70	-5.84	-5.98	-6.13	-6.28	-6.44	-6.59	18
19	-5.98	-6.13	-6.28	-6.44	-6.59	-6.75	-6.93	19
20	-6.28	-6.44	-6.59	-6.75	-6.93	-7.18	-7.27	20
21	-6.59	-6.75	-6.93	-7.18	-7.27	-7.45	-7.63	21
22	-6.93	-7.18	-7.27	-7.45	-7.63	-7.82	8.01	22
23	-7.27	-7.45	-7.63	-7.82	8.01	-8.21	-8.42	23
24	-7.63	-7.82	8.01	-8.21	-8.42	-8.63	-8.84	24
25	8.01	-8.21	-8.42	-8.63	-8.84	-9.06	-9.28	25
26	-8.42	-8.63	-8.84	-9.06	-9.28	-9.51	-9.74	26
27	-8.84	-9.06	-9.28	-9.51	-9.74	-9.99	10.23	27
28	-9.28	-9.51	-9.74	-9.99	10.23	10.40	10.74	28
29	-9.74	-9.99	10.23	10.40	10.74	11.01	11.20	29
30	10.23	10.40	10.74	11.01	11.20	11.56	11.04	30
31	10.74	11.01	11.20	11.56	11.04	12.13	12.43	31
32	11.20	11.56	11.04	12.13	12.43	12.74	13.06	32
33	11.04	12.13	12.43	12.74	13.06	13.30	13.71	33

34	~~12.43~~	~~12.74~~	~~13.06~~	~~13.38~~	~~13.71~~	~~14.05~~	~~14.40~~	34
35	~~13.06~~	~~13.38~~	~~13.71~~	~~14.05~~	~~14.40~~	~~14.76~~	~~15.12~~	35
36	~~13.71~~	~~14.05~~	~~14.40~~	~~14.76~~	~~15.12~~	~~15.50~~	~~15.88~~	36
37	~~14.40~~	~~14.76~~	~~15.12~~	~~15.50~~	~~15.88~~	~~16.27~~	~~16.67~~	37
38	~~15.12~~	~~15.50~~	~~15.88~~	~~16.27~~	~~16.67~~	~~17.08~~	~~17.51~~	38
39	~~15.88~~	~~16.27~~	~~16.67~~	~~17.08~~	~~17.51~~	~~17.94~~	~~18.38~~	39
40	~~16.67~~	~~17.08~~	~~17.51~~	~~17.94~~	~~18.38~~	~~18.85~~	~~19.30~~	40
41	~~17.51~~	~~17.94~~	~~18.38~~	~~18.85~~	~~19.30~~	~~19.78~~	~~20.26~~	41
42	~~18.38~~	~~18.85~~	~~19.30~~	~~19.78~~	~~20.26~~	~~20.77~~	~~21.28~~	42
43	~~19.30~~	~~19.78~~	~~20.26~~	~~20.77~~	~~21.28~~	~~21.82~~	~~22.35~~	43
44	~~20.26~~	~~20.77~~	~~21.28~~	~~21.82~~	~~22.35~~	~~22.91~~	~~23.47~~	44
45	~~21.28~~	~~21.82~~	~~22.35~~	~~22.91~~	~~23.47~~	~~24.05~~	~~24.64~~	45
46	~~22.35~~	~~22.91~~	~~23.47~~	~~24.05~~	~~24.64~~	~~25.26~~	~~25.87~~	46
47	~~23.47~~	~~24.05~~	~~24.64~~	~~25.26~~	~~25.87~~	~~26.52~~	~~27.17~~	47
48	~~24.64~~	~~25.26~~	~~25.87~~	~~26.52~~	~~27.17~~	~~27.85~~	~~28.53~~	48
49	~~25.87~~	~~26.52~~	~~27.17~~	~~27.85~~	~~28.53~~	~~29.24~~	~~29.96~~	49
50	~~27.17~~	~~27.85~~	~~28.53~~	~~29.24~~	~~29.96~~	~~30.70~~	~~31.46~~	50
51	~~28.53~~	~~29.24~~	~~29.96~~	~~30.70~~	~~31.46~~	~~32.24~~	~~33.03~~	51
52	~~29.96~~	~~30.70~~	~~31.46~~	~~32.24~~	~~33.03~~	~~33.86~~	~~34.68~~	52
53	~~31.46~~	~~32.24~~	~~33.03~~	~~33.86~~	~~34.68~~	~~35.55~~	~~36.41~~	53
54	~~33.03~~	~~33.86~~	~~34.68~~	~~35.55~~	~~36.41~~	~~37.32~~	~~38.23~~	54
55	~~34.68~~	~~35.55~~	~~36.41~~	~~37.32~~	~~38.23~~	~~39.19~~	~~40.15~~	55
56	~~36.41~~	~~37.32~~	~~38.23~~	~~39.19~~	~~40.15~~	~~41.15~~	~~42.15~~	56
57	~~38.23~~	~~39.19~~	~~40.15~~	~~41.15~~	~~42.15~~	~~43.21~~	~~44.25~~	57
58	~~40.15~~	~~41.15~~	~~42.15~~	~~43.21~~	~~44.25~~	~~45.36~~	~~46.47~~	58
59	~~42.15~~	~~43.21~~	~~44.25~~	~~45.36~~	~~46.47~~	~~47.63~~	~~48.79~~	59
60	~~44.25~~	~~45.36~~	~~46.47~~	~~47.63~~	~~48.79~~	~~50.01~~	~~51.23~~	60

Pay Grade	Step A	Step B	Step C	Step D	Step E	Step F	Pay Grade
12	$3.75	$3.86	$3.95	$4.05	$4.14	$4.24	12
13	3.95	4.05	4.14	4.24	4.35	4.46	13
14	4.14	4.24	4.35	4.46	4.56	4.67	14
15	4.35	4.46	4.56	4.67	4.78	4.91	15
16	4.56	4.67	4.78	4.91	5.02	5.14	16
17	4.78	4.91	5.02	5.14	5.26	5.41	17
18	5.02	5.14	5.26	5.41	5.54	5.67	18
19	5.26	5.41	5.54	5.67	5.81	5.96	19
20	5.54	5.67	5.81	5.96	6.10	6.25	20
21	5.81	5.96	6.10	6.25	6.41	6.57	21
22	6.10	6.25	6.41	6.57	6.72	6.89	22
23	6.41	6.57	6.72	6.89	7.07	7.24	23
24	6.72	6.89	7.07	7.24	7.42	7.60	24
25	7.07	7.24	7.42	7.60	7.78	7.98	25
26	7.42	7.60	7.78	7.98	8.17	8.37	26
27	7.78	7.98	8.17	8.37	8.59	8.80	27
28	8.17	8.37	8.59	8.80	9.02	9.24	28
29	8.59	8.80	9.02	9.24	9.47	9.70	29
30	9.02	9.24	9.47	9.70	9.93	10.19	30
31	9.47	9.70	9.93	10.19	10.43	10.69	31
32	9.93	10.19	10.43	10.69	10.95	11.23	32
33	10.43	10.69	10.95	11.23	11.51	11.79	33
34	10.95	11.23	11.51	11.79	12.08	12.37	34
35	11.51	11.79	12.08	12.37	12.68	12.99	35

36	12.08	12.37	12.68	12.99	13.32	13.65	36
37	12.68	12.99	13.32	13.65	13.98	14.33	37
38	13.32	13.65	13.98	14.33	14.69	15.06	38
39	13.98	14.33	14.69	15.06	15.42	15.81	39
40	14.69	15.06	15.42	15.81	16.20	16.60	40
41	15.42	15.81	16.20	16.60	17.00	17.42	41
42	16.20	16.60	17.00	17.42	17.86	18.30	42
43	17.00	17.42	17.86	18.30	18.75	19.23	43
44	17.86	18.30	18.75	19.23	19.69	20.18	44
45	18.75	19.23	19.69	20.18	20.67	21.19	45
46	19.69	20.18	20.67	21.19	21.71	22.26	46
47	20.67	21.19	21.71	22.26	22.80	23.37	47
48	21.71	22.26	22.80	23.37	23.94	24.53	48
49	22.80	23.37	23.94	24.53	25.13	25.77	49
50	23.94	24.53	25.13	25.77	26.39	27.05	50
51	25.13	25.77	26.39	27.05	27.71	28.41	51
52	26.39	27.05	27.71	28.41	29.10	29.82	52
53	27.71	28.41	29.10	29.82	30.56	31.31	53
54	29.10	29.82	30.56	31.31	32.09	32.88	54
55	30.56	31.31	32.09	32.88	33.69	34.54	55
56	32.09	32.88	33.69	34.54	35.37	36.26	56
57	33.69	34.54	35.37	36.26	37.14	38.07	57
58	35.37	36.26	37.14	38.07	38.99	39.97	58
59	37.14	38.07	38.99	39.97	40.95	41.97	59
60	38.99	39.97	40.95	41.97	42.99	44.07	60

Pay Grade	Step G	Step H	Step I	Step J	Step K	Step L	Step M	Pay Grade
12	$4.35	$4.46	$4.56	$4.67	$4.78	$4.91	$5.02	12
13	4.56	4.67	4.78	4.91	5.02	5.14	5.26	13
14	4.78	4.91	5.02	5.14	5.26	5.41	5.54	14
15	5.02	5.14	5.26	5.41	5.54	5.67	5.81	15
16	5.26	5.41	5.54	5.67	5.81	5.96	6.10	16
17	5.54	5.67	5.81	5.96	6.10	6.25	6.41	17
18	5.81	5.96	6.10	6.25	6.41	6.57	6.72	18
19	6.10	6.25	6.41	6.57	6.72	6.89	7.07	19
20	6.41	6.57	6.72	6.89	7.07	7.24	7.42	20
21	6.72	6.89	7.07	7.24	7.42	7.60	7.78	21
22	7.07	7.24	7.42	7.60	7.78	7.98	8.17	22
23	7.42	7.60	7.78	7.98	8.17	8.37	8.59	23
24	7.78	7.98	8.17	8.37	8.59	8.80	9.02	24
25	8.17	8.37	8.59	8.80	9.02	9.24	9.47	25
26	8.59	8.80	9.02	9.24	9.47	9.70	9.93	26
27	9.02	9.24	9.47	9.70	9.93	10.19	10.43	27
28	9.47	9.70	9.93	10.19	10.43	10.69	10.95	28
29	9.93	10.19	10.43	10.69	10.95	11.23	11.51	29
30	10.43	10.69	10.95	11.23	11.51	11.79	12.08	30
31	10.95	11.23	11.51	11.79	12.08	12.37	12.68	31
32	11.51	11.79	12.08	12.37	12.68	12.99	13.32	32
33	12.08	12.37	12.68	12.99	13.32	13.65	13.98	33
34	12.68	12.99	13.32	13.65	13.98	14.33	14.69	34
35	13.32	13.65	13.98	14.33	14.69	15.06	15.42	35
36	13.98	14.33	14.69	15.06	15.42	15.81	16.20	36

37	14.69	15.06	15.42	15.81	16.20	16.60	17.00	37
38	15.42	15.81	16.20	16.60	17.00	17.42	17.86	38
39	16.20	16.60	17.00	17.42	17.86	18.30	18.75	39
40	17.00	17.42	17.86	18.30	18.75	19.23	19.69	40
41	17.86	18.30	18.75	19.23	19.69	20.18	20.67	41
42	18.75	19.23	19.69	20.18	20.67	21.19	21.71	42
43	19.69	20.18	20.67	21.19	21.71	22.26	22.80	43
44	20.67	21.19	21.71	22.26	22.80	23.37	23.94	44
45	21.71	22.26	22.80	23.37	23.94	24.53	25.13	45
46	22.80	23.37	23.94	24.53	25.13	25.77	26.39	46
47	23.94	24.53	25.13	25.77	26.39	27.05	27.71	47
48	25.13	25.77	26.39	27.05	27.71	28.41	29.10	48
49	26.39	27.05	27.71	28.41	29.10	29.82	30.56	49
50	27.71	28.41	29.10	29.82	30.56	31.31	32.09	50
51	29.10	29.82	30.56	31.31	32.09	32.88	33.69	51
52	30.56	31.31	32.09	32.88	33.69	34.54	35.37	52
53	32.09	32.88	33.69	34.54	35.37	36.26	37.14	53
54	33.69	34.54	35.37	36.26	37.14	38.07	38.99	54
55	35.37	36.26	37.14	38.07	38.99	39.97	40.95	55
56	37.14	38.07	38.99	39.97	40.95	41.97	42.99	56
57	38.99	39.97	40.95	41.97	42.99	44.07	45.14	57
58	40.95	41.97	42.99	44.07	45.14	46.27	47.40	58
59	42.99	44.07	45.14	46.27	47.40	48.58	49.77	59
60	45.14	46.27	47.40	48.58	49.77	51.01	52.25	60

(b) Each employee in classified service shall, separate and apart from the salary schedule established by subsection (a) hereof, receive two and one-half percent (2 1/2%) of his base salary for each ten thousand four hundred (10,400) hours of service with the state. No additional longevity credit shall be awarded after the twentieth year of service. For purposes of this subsection, employees of former community college districts which have become state colleges or state universities shall be credited with one (1) year's service with the state for each year's employment with a community college district regardless of the time of that employment.

(c) It is hereby declared to be the intent of the legislature that the advancement of an employee to steps providing an increased salary within each pay grade shall be based solely on merit, including factors such as increased productivity, reliability, effectiveness, and the ability to achieve the goals and objectives of the particular position. No employee shall advance to a higher step within a pay grade without an affirmative certification for such purpose by the employee's immediate supervisor, approved by the departmental director or the director's designee, in accordance with the following schedule and criteria:

(i) Step A in the salary schedule shall normally be the rate at which an employee is paid within a grade when originally employed. However, when necessary to obtain a particularly qualified individual, the appointing authority may make an initial appointment at a higher step in the authorized pay grade. These advanced step appointments shall be accompanied by a written statement containing the appointing authority's justification for the higher than normal starting rate. When necessary to obtain qualified personnel in a particular classification, upon petition of the appointing

authority to the commission containing acceptable reasons therefor, a higher temporary pay grade may be authorized by the commission which, if granted, shall be reviewed annually to determine the need for continuance.

(ii) Each employee's work performance shall be evaluated after one thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion and after each two thousand eighty (2,080) hours of credited state service thereafter by his or her immediate supervisor. Employees may be eligible for advancement to step B after completion of one thousand forty (1,040) hours of credited state service at step A, provided that such service is certified as meeting the merit requirement set forth in paragraph (c) above. Effective July 1, 1979, employees may advance to steps C through M only if certified as meeting the merit requirements of paragraph (c) above. However, such in-grade advancement shall not be construed as a vested right. The department director shall designate, upon agreement with the employee, whether such in-grade advancement is temporary, conditional or permanent. It shall be the specific responsibility of the supervisor and the departmental director to effect the evaluation prescribed in paragraph (c) above on an evaluation form approved by the commission for that purpose.

(iii) In addition to merit increases authorized in paragraph (ii) above, the department director may grant a classified employee holding permanent status a lump sum bonus not to exceed one thousand dollars ($1,000) in any given fiscal year based upon an affirmative certification of meritorious service as outlined in this section. The department director shall use a performance evaluation as justification for the increase. Exceptions to the one thousand dollar ($1,000) limit provided in this section may be granted if approved in advance by the state board of examiners.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after June 6, 1993.

Approved March 26, 1993.

CHAPTER 227
(H.B. No. 419)

AN ACT

RELATING TO THE IDAHO CREDIT CODE; AMENDING SECTION 28-42-201, IDAHO CODE, TO PROVIDE A SUBSTITUTION OF LANGUAGE; AND AMENDING SECTION 28-42-301, IDAHO CODE, TO PROVIDE INCREASES AND MINIMUM AMOUNTS CHARGEABLE FOR A DELINQUENCY ON REGULATED CONSUMER CREDIT TRANSACTIONS AND REGULATED CONSUMER LOANS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 28-42-201, Idaho Code, be, and the same

is hereby amended to read as follows:

28-42-201. MAXIMUM FINANCE CHARGE. (1) With respect to a loan or credit sale, the rate of finance charge shall be that which is agreed upon between the parties to the transaction. In addition to the finance charge permitted herein, a creditor may contract for and receive any other charge ~~unless~~, except to the extent expressly prohibited or limited by this act.

(2) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise. If the credit transaction is precomputed:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment is governed by the provisions on rebate upon prepayment, section 28-42-307, Idaho Code.

(3) Except as provided in subsection (4) of this section, the term of a credit transaction for purposes of this section commences on the day the credit transaction is made. The administrator may adopt rules with respect to treating as regular minor irregularities in amount or time.

(4) With respect to an insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance, payment of the premium on which is financed by the loan.

SECTION 2. That Section 28-42-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-42-301. DELINQUENCY CHARGES. (1) With respect to a precomputed regulated consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its due date, as originally scheduled or as deferred, in an amount which is not more than five percent (5%) of the unpaid amount of the installment, or five dollars ($5.00), whichever is greater.

(2) With respect to a regulated consumer loan secured by a security interest in real property which is used or expected to be used as the residence of the debtor which is not a precomputed regulated consumer loan, the parties may contract for a delinquency charge on any installment not paid in full within fifteen (15) days after its scheduled due date in an amount not exceeding ~~four~~ five percent (~~4~~5%) of the unpaid amount of the installment, or five dollars ($5.00), whichever is greater.

(3) With respect to all other regulated consumer credit transactions, whether secured or unsecured, and whether such credit transactions are classified as open-end credit or closed-end credit, the parties may contract for a delinquency charge on any installment or scheduled payment not paid in full within fifteen (15) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment or scheduled payment, or five dollars ($5.00), whichever is greater.

(4) A delinquency charge under subsection (1), ~~or~~ subsection (2) or subsection (3) of this section may be collected only once on an installment or scheduled payment, however long it remains in default.

No delinquency charge may be collected if the installment or scheduled payment has been deferred and a deferral charge, section 28-42-302, Idaho Code, has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(~~4~~5) No delinquency charge may be collected on an installment or payment which is paid in full within ten (10) days after its scheduled ~~installment~~ due date even though an earlier maturing installment or scheduled payment or a delinquency charge on an earlier installment or scheduled payment may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or scheduled payments and then to delinquent installments or scheduled payments.

(~~5~~6) If two (2) installments or parts thereof of a precomputed regulated consumer credit transaction are in default for ten (10) days or more, the creditor may elect to convert the credit transaction from a precomputed regulated consumer credit transaction to one in which the finance charge is based on unpaid balances. In this event, he shall make a rebate pursuant to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, as of the maturity date of the first delinquent installment, and thereafter may make a finance charge as authorized by the provisions on finance charge for regulated consumer credit transactions. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge, section 28-42-307, Idaho Code. ~~If the creditor proceeds under the provisions of this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further delinquency or deferral charges shall be made.~~

Approved March 26, 1993.

CHAPTER 228
(H.B. No. 420)

AN ACT
APPROPRIATING MONEYS TO THE REGULATORY BOARDS FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the regulatory boards in the Department of Self-Governing Agencies the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. STATE ATHLETIC DIRECTOR:				
FROM:				
General Fund	$1,000	$3,800		$4,800
State Regulatory Fund		4,500		4,500
TOTAL	$1,000	$8,300		$9,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
B. BOARD OF PHARMACY:				
FROM:				
General Fund	$ 39,500	$ 100		$ 39,600
State Regulatory Fund	243,900	142,800	$12,000	398,700
TOTAL	$283,400	$142,900	$12,000	$438,300
C. BOARD OF ACCOUNTANCY:				
FROM:				
State Regulatory Fund	$149,700	$145,500	$ 9,000	$304,200
D. BOARD OF DENTISTRY:				
FROM:				
State Regulatory Fund	$98,700	$60,500	$3,000	$162,200
E. BOARD OF ENGINEERING EXAMINERS:				
FROM:				
State Regulatory Fund	$123,900	$123,800		$247,700
F. BOARD OF MEDICINE:				
FROM:				
State Regulatory Fund	$256,400	$179,300	$3,900	$439,600
G. BOARD OF NURSING:				
FROM:				
State Regulatory Fund	$237,500	$147,100	$5,000	$389,600
H. BUREAU OF OCCUPATIONAL LICENSES:				
FROM:				
State Regulatory Fund	$476,300	$412,500		$888,800
I. PUBLIC WORKS CONTRACTORS STATE LICENSE BOARD:				
FROM:				
State Regulatory Fund	$181,800	$89,700	$3,000	$274,500
J. IDAHO REAL ESTATE COMMISSION:				
FROM:				
State Regulatory Fund	$527,800	$245,800	$16,200	$789,800
K. PROFESSIONAL GEOLOGISTS BOARD:				
FROM:				
State Regulatory Fund	$19,000	$16,300		$35,300
L. BOARD OF OPTOMETRY:				
FROM:				
State Regulatory Fund	$2,500	$12,600		$15,100
M. IDAHO CERTIFIED SHORTHAND REPORTERS BOARD:				
FROM:				
State Regulatory Fund	$12,200	$13,800		$26,000
N. OUTFITTERS AND GUIDES BOARD:				
FROM:				
State Regulatory Fund	$155,400	$137,900	$3,400	$296,700
O. BOARD OF VETERINARY MEDICINE:				
FROM:				
State Regulatory Fund	$36,200	$45,700		$81,900
P. HISPANIC COMMISSION:				
FROM:				
General Fund	$60,700	$ 8,200		$ 68,900
State Regulatory Fund	25,000	10,200		35,200
Federal Fund		2,100		2,100
TOTAL	$85,700	$20,500		$106,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
GRAND TOTAL	$2,647,500	$1,802,200	$55,500	$4,505,200

Approved March 26, 1993.

CHAPTER 229
(H.B. No. 421)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE MEDICAL ASSISTANCE PAYMENTS PROGRAM IN ADDITION TO THE APPROPRIATION MADE IN SECTION 2, CHAPTER 287, LAWS OF 1992; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO DEVELOP AND IMPLEMENT A MANAGED CARE SYSTEM; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO RESEARCH AND REVIEW COPAYMENTS; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO SEEK MEDICARE REIMBURSEMENT; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO PARENTAL CONTRIBUTIONS; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO ESTABLISH AN ASSET LIMIT FOR THE PREGNANT WOMEN AND CHILDREN PROGRAM; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO DEVELOP A COMPARATIVE COST STUDY; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO MEDICAID REIMBURSEMENT RATES AND PROCEDURES; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO ALTER MEDICAL TRANSPORTATION REIMBURSEMENT RATES; DIRECTING THE DEPARTMENT OF HEALTH AND WELFARE TO REQUIRE THE USE OF GENERIC DRUGS AND TO REQUIRE PRIOR AUTHORIZATION OF CERTAIN PRESCRIPTION DRUGS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. In addition to the appropriation made in Section 2, Chapter 287, Laws of 1992, there is hereby appropriated to the Department of Health and Welfare for the Medical Assistance Payments program the following amount to be deposited into the Cooperative Welfare Fund and to be expended for the designated expense class from the listed funds, for the period July 1, 1992, through June 30, 1993:

FOR:	
Trustee and Benefit Payments	$53,726,700
FROM:	
General Fund	$12,905,100
Federal Funds	32,712,100
Other Funds	8,109,500
TOTAL	$53,726,700

SECTION 2. The Department of Health and Welfare is hereby directed to develop and implement, as soon as possible, a new health care delivery system for those clients on Medicaid, utilizing a managed care concept.

SECTION 3. The Department of Health and Welfare is hereby directed to research and review a copayment requirement for those Medicaid services allowable under federal law and report to the Legislative Interim Committee on Health Care such findings and recommendations.

SECTION 4. The Department of Health and Welfare is hereby directed to develop a program to recover reimbursement from Medicare and private Medicare supplemental insurance.

SECTION 5. It is Legislative intent that parents of children living in nursing homes, ICF-MR facilities or receiving Medicaid benefits under the Certain Disabled Children (Katie Beckett) program be required to pay part of their child's cost of care. The amount they shall be required to pay shall be determined on the basis of their income after subtracting certain allowable deductions.

SECTION 6. The Department of Health and Welfare is hereby directed to establish an asset limit of $5,000 for those receiving Medicaid benefits under the Pregnant Women and Children (PWC) program.

SECTION 7. The Department of Health and Welfare is hereby directed to examine the Personal Care Services program by developing a comparative cost study between the Personal Care Services program, residential care and nursing home care for the following recipient categories: those clients over the age of sixty-five, those clients considered developmentally disabled, and all other clients.

SECTION 8. It is the intent of the Legislature that the Department of Health and Welfare review the compensation package for Medicaid recipients. Specifically, the Department should review reimbursement rates for all procedures, evaluate the appropriateness of such procedures under Medicaid, and report to the Legislative Interim Committee on Health Care.

SECTION 9. The Department of Health and Welfare is hereby directed to alter medical transportation reimbursement rates from twenty-six cents per mile to twenty cents per mile.

SECTION 10. The Department of Health and Welfare is hereby directed to require the use of generic drugs in all cases, unless otherwise directed by a physician, to require prior authorization of certain prescription drugs, where cost effective.

SECTION 11. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 230
(H.B. No. 224, As Amended)

AN ACT

RELATING TO THE SALE AND SOLICITATION FOR SALE OF NEW VEHICLES TO MUNICIPALITIES WITHIN THE STATE OF IDAHO; AMENDING SECTION 49-1601, IDAHO CODE, TO EXEMPT SALES OF SPECIALTY VEHICLES TO GOVERNMENTAL ENTITIES FROM CERTAIN LICENSURE REQUIREMENTS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1601, Idaho Code, be, and the same is hereby amended to read as follows:

49-1601. UNLICENSED DEALERS AND SALESMEN PROHIBITED. It shall be unlawful for any person to act as a dealer or salesman, wholesaler, manufacturer of vehicles or a manufacturer, distributor, factory branch, or distributor branch representative, without first having procured a license from the department. It shall be unlawful for any person other than a licensed dealer to display a vehicle for sale unless the title is in the name of the displayer. It shall be unlawful to solicit sales of vehicles without a dealer's license, unless the title is in the name of the seller. The provisions of this section shall not apply to the sale or solicitation of specialty vehicles to governmental entities within the state. Specialty vehicles shall be defined as fire trucks, fire engines, urban transit buses, ambulances, street sweepers and hazardous material response vehicles.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 231
(H.B. No. 235, As Amended)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1842, IDAHO CODE, TO MAKE THE SECTION APPLICABLE TO COMMERCIAL AUTOMOBILE INSURANCE, TO PROVIDE FOR A TEN DAY NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM, TO PROVIDE THAT NO NOTIFICATION OF CANCELLATION IS REQUIRED IF THE INSURED REQUESTS CANCELLATION, TO REQUIRE NOTICE OF A TOTAL PREMIUM INCREASE GREATER THAN TEN PERCENT WHICH IS THE RESULT OF A COMPARABLE INCREASE IN PREMIUM RATES, AND TO PROVIDE THAT A PREMIUM INCREASE IS EFFECTIVE ON AND AFTER THE FIRST DAY OF THE RENEWAL TERM; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1842, Idaho Code, be, and the same is hereby amended to read as follows:

41-1842. COMMERCIAL INSURANCE -- CANCELLATION -- NONRENEWAL. (1) Applicability. The provisions of this section apply only to:

(a) Commercial property insurance policies;

(b) Commercial liability insurance policies other than ~~automobile,~~ aviation and employer's liability insurance policies;

(c) Commercial multiperil insurance policies.

The provisions of this section do not apply to: block cancellations or block nonrenewals as provided in section 41-1841, Idaho Code, reinsurance, excess and surplus lines insurance, residual market risks, worker's compensation insurance, multistate location risks, policies subject to retrospective rating plans, excess or umbrella policies and such other policies that are exempted by the director of the department of insurance.

(2) Definitions. For the purposes of this section:

(a) "Cancellation" means termination of a policy at a date other than its expiration date.

(b) "Expiration date" means the date upon which coverage under a policy ends. It also means, for a policy written for a term longer than one (1) year or with no fixed expiration date, each annual anniversary date of such policy.

(c) "Nonpayment of premium" means the failure or inability of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance subject to this section, whether such payments are payable directly to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit.

(d) "Nonrenewal" or "not to renew" means termination of a policy at its expiration date.

(e) "Renewal" or "to renew" means the issuance, or the offer so to issue, by an insurer of a policy succeeding a policy previously issued and delivered by the same insurer or an insurer within the same group of insurers, or the issuance of a certificate or notice extending the term of an existing policy for a specified period beyond its expiration date.

(3) Notice of cancellation.

(a) Permissible cancellations. If coverage under a policy has not been in effect for sixty (60) days and the policy is not a renewal, cancellation of such policy shall be effected by mailing or delivering a written notice to the first-named insured at the last known mailing address shown on the policy at least thirty (30) days before the effective date of the cancellation, provided however, if such cancellation is for the reason stated in subsection (3)(a)(i) of this section, the time such cancellation may be effective following notice shall be as provided in subsection (3)(b)(i) of this section. A cancellation requested by the insured shall be effective on the later of the date requested by the insured or the date it is received by the insurer. After coverage has been in effect for more than sixty (60) days or after the

effective date of a renewal policy, whichever is earlier, no insurer shall cancel a policy unless the cancellation is based on at least one (1) of the following reasons:

(i) Nonpayment of premium.

(ii) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy.

(iii) Activities or omissions on the part of the named insured which increase any hazard insured against, including a failure to comply with loss control recommendations.

(iv) Change in the risk which materially increases the risk of loss after insurance coverage has been issued or renewed including, but not limited to, an increase in exposure to regulation, legislation or court decision.

(v) Loss or decrease of the insurer's reinsurance covering all or part of the risk or exposure by the policy.

(vi) Determination by the director that the continuation of the policy would jeopardize an insurer's solvency or would place the insurer in violation of the insurance laws of this state or any other state.

(vii) Violation or breach by the insured of any policy terms or conditions other than nonpayment of premium.

(b) Notification of cancellation.

(i) A notice of cancellation of insurance coverage by an insurer shall be in writing and shall be mailed or delivered to the first-named insured at the last known mailing address as shown on the policy. Notices of cancellation based on subsections (3)(a)(ii) through (a)(vii) of this section shall be mailed or delivered at least thirty (30) days prior to the effective date of the cancellation. Notices of cancellation ~~based--upon~~ for the reason stated in subsection (3)(a)(i) of this section without regard to when such cancellation shall be effected shall be mailed or delivered at least ten (10) days prior to the effective date of cancellation. The notice shall state the effective date of the cancellation.

(ii) The insurer shall provide the first-named insured with a written statement setting forth the reason(s) for the cancellation if (1) the insured requests such a statement in writing; and (2) the named insured agrees in writing to hold the insurer harmless from liability for any communication giving notice of or specifying the reasons for a cancellation or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a cancellation under this section.

(4) Notice of nonrenewal.

(a) An insurer may ~~not~~ decline to renew a policy if the insurer delivers or mails to the first-named insured, at the last known mailing address, written notice that the insurer will not renew the policy. Such notice shall be mailed or delivered at least forty-five (45) days before the expiration date. If the notice is mailed less than forty-five (45) days before expiration, coverage shall remain in effect until forty-five (45) days after notice is

mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date shall be considered pro rata based upon the previous year's rate. For purposes of this section, the transfer of a policyholder between companies within the same insurance group is not a nonrenewal or a refusal to renew. In addition, changes in deductibles, changes in premium, and changes in the amount of insurance or reductions in policy limits or coverage shall not be deemed to be nonrenewals or refusals to renew. Notice of nonrenewal is not required if:

(i) The insurer or a company within the same insurance group has offered to issue a renewal policy; or

(ii) Where the named insured has obtained replacement coverage or has agreed in writing to obtain replacement coverage.

(b) If an insurer provides the notice described in subsection (4) of this section and thereafter the insurer extends the policy for ninety (90) days or less, an additional notice of nonrenewal is not required with respect to the extension.

(5) Notice of premium or coverage changes. An insurer shall mail or deliver to the named insured, at the last known mailing address, written notice of a total premium increase~~s~~ greater than ten percent (10%) which is the result of a comparable increase in premium rates, changes in deductibles, reductions in limits, or reductions in coverages at least thirty (30) days prior to the expiration date of the policy. If the insurer fails to provide such thirty (30) day notice, the coverage provided to the named insured shall remain in effect until thirty (30) days after such notice is given or until the effective date of replacement coverage obtained by the named insured, whichever first occurs. For the purposes of this section, notice is considered given thirty (30) days following date of mailing or delivery of the notice to the named insured. If the insured elects not to renew, any earned premium for the period of extension of the terminated policy shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, the premium increase, if any, and other changes shall be effective on and after the first day ~~following the prior policy's expiration or anniversary date~~ of the renewal term.

(6) Proof of notice. Proof of mailing of notice of cancellation, or of nonrenewal or of premium or coverage changes, to the named insured at the last known mailing address showing the policy, shall be sufficient proof of notice.

(7) Application, effective date and termination. The provisions of this section shall apply only to policies with coverage effective dates after the effective date of this section.

(8) Regulations. The director may promulgate rules and regulations to implement the provisions of this section. Every rule and regulation promulgated within the authority conferred by this act shall be of temporary effect and shall become permanent only by enactment by statute at the regular session of the legislature first following adoption of the rule or regulation. Rules and regulations not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules and regulations to the legislature.

SECTION 2. This act shall be in full force and effect on and after October 1, 1993.

Approved March 26, 1993.

CHAPTER 232
(H.B. No. 238)

AN ACT

RELATING TO THE REGULATION OF THE LEASE-PURCHASE OF CONSUMER GOODS IN THE STATE OF IDAHO; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW PART 1, CHAPTER 36, TITLE 28, IDAHO CODE, PROVIDING FOR A SHORT TITLE AND DECLARING A PURPOSE, DEFINING TERMS, EXEMPTING LEASE-PURCHASE OF CONSUMER GOODS FROM THE OPERATION OF CERTAIN OTHER LAWS, PROVIDING DISCLOSURE REQUIREMENTS IN LEASE-PURCHASE OF CONSUMER GOODS TRANSACTIONS, PROHIBITING CERTAIN PRACTICES, PROVIDING FOR PROCEDURES TO REINSTATE AGREEMENTS, REQUIRING RECEIPTS AND ACCOUNTS OF LESSORS TO CONSUMERS, REGULATING RENEGOTIATIONS OF AGREEMENTS, REGULATING ADVERTISING FOR A LEASE-PURCHASE OF CONSUMER GOODS AGREEMENT, AND PROVIDING DAMAGES FOR VIOLATION OF THE PROVISIONS OF THE ACT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Part 1, Chapter 36, Title 28, Idaho Code, and to read as follows:

CHAPTER 36
IDAHO LEASE-PURCHASE AGREEMENT ACT

28-36-101. SHORT TITLE AND PURPOSE. This act shall be known and may be cited as the "Idaho Lease-Purchase Agreement Act." The purpose of this act is to protect both consumers and businesses engaged in the lease-purchase of consumer goods against unfair or deceptive acts and practices, to provide certainty and regularity in the conduct of these transactions, and to provide efficient and economical procedures to secure such protection.

28-36-102. DEFINITIONS. As used in this chapter:

(1) "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a lease-purchase agreement.

(2) "Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used by the consumer primarily for personal, family or household purposes.

(3) "Consummation" means the time a consumer enters a lease-purchase agreement.

(4) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

(5) "Lease-purchase agreement" means an agreement by a lessor and a consumer for the use of personal property by a consumer primarily for personal, family or household purposes, for an initial period of four (4) months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

(6) "Renewal date" means the date specified in the lease-purchase agreement upon which the consumer must either return the personal property to the lessor or renew the lease-purchase agreement.

28-36-103. INAPPLICABILITY OF OTHER LAWS -- EXEMPTED TRANSACTIONS. (1) Lease-purchase agreements are not governed by the laws relating to:

(a) A home solicitation sale as defined in section 28-43-401, et seq., Idaho Code;

(b) A regulated consumer credit transaction pursuant to section 28-41-101, et seq., Idaho Code; or

(c) A security interest as defined in section 28-1-201, Idaho Code.

(2) This chapter does not apply to the following:

(a) Leases of personal property primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(b) A lease of a safe deposit box;

(c) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or

(d) A lease of an automobile.

28-36-104. GENERAL REQUIREMENTS OF DISCLOSURE. (1) The lessor shall disclose, or cause to be disclosed, to the consumer the information required in this chapter. In a transaction involving more than one (1) lessor, only one (1) lessor need make the disclosures, but all lessors shall be bound by such disclosures.

(2) The disclosures shall be made at or before consummation of the lease-purchase agreement.

(3) The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under section 28-36-105(1), Idaho Code, shall be made on the face of the contract above the line for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the provisions of this chapter.

28-36-105. DISCLOSURES. (1) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(a) The total number, total dollar amount and frequency of all payments necessary to acquire ownership of the property;

(b) A statement that the consumer will not own the property until the consumer has made the total payments necessary to acquire ownership;
(c) A statement that the consumer is responsible to the lessor for the fair market value of the property if, and as of the time, it is lost, stolen, damaged or destroyed;
(d) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of the provisions of this chapter;
(e) The total amount initially payable or required at or before consummation of the agreement or delivery of the property, whichever is later;
(f) A statement that the total of payments necessary to acquire ownership does not include other charges, such as late payment, default, pickup and reinstatement fees, which fees shall be separately disclosed in the agreement;
(g) A statement clearly summarizing the terms of the consumer's option to purchase, if any, including a statement regarding whether the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;
(h) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, the warranty shall be transferred to the consumer, if allowed by the terms of the warranty;
(i) The consummation date of the agreement and the identities of the lessor and consumer;
(j) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon the renewal date together with any past due rental payments; and
(k) Notice of the right to reinstate an agreement as herein provided.

28-36-106. PROHIBITED PRACTICES. A lease-purchase agreement may not contain:
(1) A confession of judgment;
(2) A negotiable instrument;
(3) A claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
(4) A wage assignment;
(5) A waiver by the consumer of claims or defenses; or
(6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises without consent, or to commit any breach of the peace in the repossession of goods.

28-36-107. REINSTATEMENT. (1) A consumer who fails to make a timely rental payment and who fails to voluntarily return or surrender the leased property on or before the renewal date, may reinstate the agreement without losing any rights or options which exist under the agreement, by the payment, within five (5) days after the renewal date, if the consumer pays monthly, or within two (2) days after the renewal date, if the consumer pays more frequently than monthly, of:

(a) All past due rental charges;

(b) If the property has been picked up, the pickup and delivery fees; and

(c) Any applicable reinstatement fee and default fee as set forth in the lease-purchase agreement.

(2) A consumer who voluntarily returned or surrendered the property on or before the renewal date, other than through judicial process, and is current in all payments due under the lease agreement on the renewal date, may reinstate the agreement without losing any rights or options which exist under the agreement:

(a) During a period of not less than twenty-one (21) days after the date of the return of the property if at the time of surrender or voluntary return of the property the consumer had paid less than two-thirds (2/3) of the total of payments necessary to acquire ownership; or

(b) During a period of not less than forty-five (45) days after the date of the return of the property if at the time of surrender or voluntary return of the property the consumer had paid two-thirds (2/3) or more of the total of payments necessary to acquire ownership.

(3) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period.

(4) Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

28-36-108. RECEIPTS AND ACCOUNTS. The lessor shall provide the consumer a written receipt for each payment made by cash or money order.

28-36-109. RENEGOTIATIONS. A renegotiation shall occur when an existing lease-purchase agreement is replaced by a new agreement entered into by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, the following events shall not be treated as renegotiations and shall not require new disclosures:

(1) The additions or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent (25%);

(2) A deferral or extension of one (1) or more periodic payments, or portions of a periodic payment;

(3) A reduction in charges in the lease or agreement; or

(4) A lease or agreement modified in a court proceeding.

28-36-110. ADVERTISING. (1) If an advertisement for a lease-

purchase agreement refers to or states the dollar amount of the rental payment and the right to acquire ownership for any one (1) specific item, then in respect to that item the advertisement shall also clearly and conspicuously state the following items, as applicable:

(a) That the transaction advertised is a lease-purchase agreement;

(b) The total of payments necessary to acquire ownership; and

(c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) No owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall be liable under this section.

(3) The provisions of subsection (1) of this section shall not apply to an advertisement which does not refer to or state the dollar amount of any payment, or which is published in a telephone directory, or in any similar business directory.

28-36-111. ENFORCEMENT. (1) A lessor whose violation of the provisions of this chapter causes damages to a consumer shall be subject to a judgment by a court of competent jurisdiction for actual damages, if the lessor can show by preponderance of the evidence that the damage was caused by a good faith dispute between the parties; or for actual damages or one thousand dollars ($1,000), whichever is greater, in the event the violation is not a result of a good faith dispute between the parties.

(2) As a condition precedent to bringing any action for the collection of a penalty pursuant to this section, the consumer must give the lessor written notice of the violation or violations alleged twenty (20) days prior to filing such action.

(3) No action under the provisions of this section may be brought in any court of competent jurisdiction more than one (1) year after the date of the consumer's last payment under the lease-purchase agreement or more than one (1) year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

Approved March 26, 1993.

CHAPTER 233
(H.B. No. 241)

AN ACT

RELATING TO THE STATE PERSONNEL SYSTEM; AMENDING SECTION 67-5302, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS, AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5302, Idaho Code, be, and the same is hereby amended to read as follows:

67-5302. DEFINITIONS. As used in this chapter, and other applica-

ble sections of the Idaho Code, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context. Such terms and their definitions are:

(1) "Administrative employee" means any person, nonclassified or classified appointed to a position which meets the following criteria:

1. (a) Responsible office or nonmanual work directly related to the management policies of a department or section; or

(b) Responsible work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment; and

2. The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures. The employee must have the authority to make important decisions; and

3. The employee must:

(a) Regularly assist a bona fide executive or administrative employee; or

(b) Perform work under general supervision along specialized or technical lines requiring special training, experience or knowledge; or

(c) Execute under only general supervision special assignments; and

4. The employee is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.

5. Final designation of a classified position as "administrative" within this definition shall be made by the Idaho personnel commission.

(2) "Appointing authority" means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to make appointments to or employ personnel in any department.

(3) "Class" means a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience or skill, and other characteristics, that the same title, the same tests of fitness and the same schedule of compensation may be applied to each position in the group.

(4) "Classified officer or employee" means any person appointed to or holding a position in any department of the state of Idaho which position is subject to the provisions of the merit examination, selection, retention, promotion and dismissal requirements of chapter 53, title 67, Idaho Code.

(5) "Commission" means the Idaho personnel commission.

(6) "Compensatory time" means approved time off from duty provided in compensation for overtime hours worked.

(7) "Department" means any department, agency, institution or office of the state of Idaho.

(8) "Disabled veteran" means an individual who has served on military duty in the armed forces of the United States during any period of war recognized by the United States department of veterans affairs

for the purposes of awarding federal veterans' benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), or during any other conflict recognized by the award of a campaign or service medal of the United States; and has been separated therefrom under honorable conditions; and has established the present existence of a service-connected disability; and is receiving compensation, disability retirement benefits, or pension under a public statute as administered by the department of veterans affairs or a military department.

(9) "Eligible" means a person who has been determined to be qualified for a classified position and whose name has been placed on the register of eligibles.

(~~9~~10) "Executive employee" means any person, nonclassified or classified, appointed to a position equivalent to a bureau chief or above as provided in section 67-2402, Idaho Code, or any employee meeting the following criteria:

1. An individual whose primary duty is management of a department, division or section; and
2. Who customarily and regularly directs the work of at least two (2) or more other employees therein; and
3. Who has the authority to hire and fire, or to recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given particular weight; and
4. Who customarily and regularly exercises discretionary powers; and
5. Who is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.
6. Final designation of a classified position as "executive" in this definition shall be made by the Idaho personnel commission.

(~~10~~11) "Exempt employee" means any employee, classified or nonclassified, who is determined to be an executive, professional or administrative employee as defined herein, or who qualifies for any other exemption from cash compensation for overtime under applicable federal law. Final designation of a classified position as exempt shall be made by the Idaho personnel commission.

(~~11~~12) "Full-time employee" means any employee working a forty (40) hour work week.

(~~12~~13) "Holiday" means the following:

January 1 (New Year's Day);
Third Monday in January (Martin Luther King, Jr.-Idaho Human Rights Day);
Third Monday in February (Washington's Birthday);
Last Monday in May (Decoration Day);
July 4 (Independence Day);
First Monday in September (Labor Day);
Second Monday in October (Columbus Day);
November 11 (Veteran~~'~~s Day);
Fourth Thursday in November (Thanksgiving);
December 25 (Christmas).

In addition, the term "holiday" shall mean any day so designated by the President of the United States or the governor of this state for a public fast, thanksgiving or holiday.

In the event that a holiday occurs on a Saturday, the preceding

Friday shall be a holiday, and if the holiday falls on a Sunday, the following Monday shall be a holiday.

A holiday is a day of exemption from work granted to employees during which said employees shall be compensated as if they actually worked.

(~~13~~4) "Hours worked" means those hours actually spent in the performance of the employee's job and shall not include holidays, vacation or sick leave or other approved leave of absence.

(~~14~~5) "Nonclassified employee" means any person appointed to or holding a position in any department of the state of Idaho, which position is exempted from the provisions of chapter 53, title 67, Idaho Code, as provided for in section 67-5303, Idaho Code.

(~~15~~6) "Normal work week" means any forty (40) hours worked during a particular one hundred and sixty-eight (168) hour period as previously established by the employee's appointing authority.

(~~16~~7) "Open competitive examination" means an examination which may be taken by qualified applicants to compete on an equal basis for listing on the register of eligibles.

(~~17~~8) "Overtime work" means time worked on holidays and time worked in excess of forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, except that in the case of those employees engaged in law enforcement, correctional and fire protection activities characterized by irregular shift work schedules, time worked in excess of one hundred sixty (160) hours in a period of twenty-eight (28) consecutive days shall constitute overtime work within the meaning of this chapter.

(~~18~~9) "Participating department" means any department of the state of Idaho which employs persons in classified positions subject to the merit examination, selection, retention, promotion and dismissal requirements of this chapter.

(~~19~~20) "Part-time employee" means any employee whose usually scheduled work is less than forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours.

(~~20~~1) "Personnel system" means the procedure for administering employees in accordance with this chapter.

(~~21~~2) "Political office" means a public office for which partisan politics is a basis for nomination, election or appointment.

(~~22~~3) "Political organization" means a party which sponsors candidates for election to political office.

(~~23~~4) "Position" means a group of duties and responsibilities legally assigned or delegated by one (1) or more appointing authorities and requiring the employment of one (1) person.

(~~24~~5) "Professional employee" means any person, nonclassified or classified, appointed to a position which meets the following criteria:

1. The employee's primary duty must be either:
   (a) Work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study; or
   (b) Work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on his invention, imagination, or talent; or

(c) Work as a teacher certified or recognized as such in a school system or educational institution by which he is employed; and

2. The employee must consistently exercise discretion and judgment; and

3. The employee must do work that is predominantly intellectual and varied, as distinguished from routine or mechanical duties; and

4. The employee is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established ~~by~~ in section 67-5309C, Idaho Code.

5. Final designation of a classified position as "professional" within this definition shall be made by the Idaho personnel commission.

(25~~6~~) "Provisional appointment" means appointment to a classified position pending the establishment of a register for such position and employment shall not be continued in this status longer than thirty (30) days after establishment of a register.

(26~~7~~) "Qualifying examination" means an examination given to a selected person to determine eligibility for reclassification or appointment to a position in a classification.

(27~~8~~) "Register" means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established by the commission.

(28~~9~~) "Seasonal appointment" means an appointment to a position which is permanent in nature, but which has intermittent work periods throughout the year.

(~~29~~30) "Service rating" means a recorded evaluation of work performance and promotional potential of an employee by his supervisor.

(30~~1~~) "Temporary appointment" means appointment to a position which is not permanent in nature, and in which employment will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period. No person holding a temporary appointment may work in excess of one thousand three hundred eighty-five (1,385) hours during a twelve (12) month period of time for any one (1) department.

(31~~2~~) "Vacation leave" means a period of exemption from work granted to employees during which time said employees shall be compensated. The term shall not include compensatory time for overtime work.

(33) "Veteran" means any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans' benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), or during any other conflict recognized by the award of a campaign or service medal of the United States, and who has been discharged under other than dishonorable conditions.

Approved March 26, 1993.

CHAPTER 234
(H.B. No. 264)

AN ACT

RELATING TO PROCEEDINGS BEFORE THE PUBLIC UTILITIES COMMISSION; AMENDING SECTION 61-617A, IDAHO CODE, TO INCREASE THE MAXIMUM AWARD OF COSTS WHICH MAY BE MADE TO INTERVENORS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 61-617A, Idaho Code, be, and the same is hereby amended to read as follows:

61-617A. AWARD OF COSTS OF INTERVENTION. (1) It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.

(2) The commission may order any regulated electric, gas, water or telephone utility with gross Idaho intrastate annual revenues exceeding one million five hundred thousand dollars ($1,500,000) to pay all or a portion of the costs of one or more parties for legal fees, witness fees, and reproduction costs, not to exceed a total for all intervening parties combined of twenty-five thousand dollars ($20~~0~~5,000) in any proceeding before the commission. The determination of the commission with regard to the payment of these expenses shall be based on the following considerations:

(a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and

(b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and

(c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and

(d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

(3) Expenses awarded to qualifying intervenors shall be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Expenses awarded shall be chargeable to the class of customers represented by the qualifying intervenors.

(4) The commission may adopt rules and regulations for the implementation of this statute.

(5) The payment of expenses of intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 26, 1993.

CHAPTER 235
(H.B. No. 265)

AN ACT

RELATING TO POWERS AND DUTIES OF DEPARTMENT HEADS; AMENDING SECTION 67-2405, IDAHO CODE, TO REVISE POWERS AND DUTIES OF DEPARTMENT HEADS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-2405, Idaho Code, be, and the same is hereby amended to read as follows:

67-2405. POWERS AND DUTIES OF DEPARTMENT HEADS. (1) Unless specifically provided otherwise, each department head shall:

(~~1~~a) Supervise, direct, account for, organize, plan, administer and execute the functions vested within the department as provided by law.

(~~2~~b) Establish policy to be followed by the department and its employees.

(~~3~~c) Compile and submit reports and budgets for the department as required by law.

(~~4~~d) Provide the governor with any information that he requests at any time on the operation of the department.

(~~5~~e) Represent the department in communications to the legislature and the governor.

~~(6)--Prescribe--rules,-consistent-with-law,-for-the-administration of-the-department,-the-conduct-of-employees,-the-distribution--and performance-of-business,-and-the-custody,-use,-and-preservation-of records,--documents,--and--property-pertaining-to-the-operation-of the-department.-The-constitutional-officers-shall-prescribe--their own-rules.~~

(~~7~~f) Establish the internal organizational structure of the department and assign the functions of the department to subunits to promote economic and efficient administration and operation of the department. The internal structure of a department shall be established in accordance with section 67-2402(3), Idaho Code.

(~~8~~g) Subject to law, and the provisions of the state's merit system, establish and make appointments to necessary subordinate positions, remove incompetent, ineffectual or unfit employees and abolish unnecessary positions.

(2) Each department head has authority to:

(a) Prescribe rules consistent with law for the administration of the department, the conduct of employees, the distribution and performance of business, and the custody, use and preservation of records, documents and property pertaining to the operation of the department. The constitutional officers shall prescribe their own rules.

(~~9~~b) ~~Each--department--head--may,--s~~Subject to law, and the state merit system where applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the depart-

ment.

(~~10~~c) Delegate any of the functions vested within the department head to subordinate employees, except the power to ~~remove--employees or~~ fix their compensation.

(~~11~~d) Require that any officer or employee of the department give an official bond, if the officer or employee of the department is not required to do so by law, in the amount to be determined by the director of the department of administration.

Approved March 26, 1993.

CHAPTER 236
(H.B. No. 273)

AN ACT

RELATING TO COMPENSATION OF VICTIMS OF CRIMES; AMENDING SECTION 19-5307, IDAHO CODE, TO PROVIDE THAT PUNITIVE FINES IMPOSED IN CASES OF VIOLENT CRIME MAY BE OFFSET AGAINST AN AWARD OF PUNITIVE DAMAGES IN A CIVIL ACTION BROUGHT BY OR ON BEHALF OF THE VICTIM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-5307, Idaho Code, be, and the same is hereby amended to read as follows:

19-5307. FINES IN CASES OF CRIMES OF VIOLENCE. (1) Irrespective of any penalties set forth under state law, and in addition thereto, the court, at the time of sentencing or such later date as deemed necessary by the court, may impose a fine not to exceed five thousand dollars ($5,000) against any defendant found guilty of any felony listed in subsection (2) of this section.

The fine shall operate as a civil judgment against the defendant, and shall be entered on behalf of the victim named in the indictment or information, or the family of the victim in cases of homicide or crimes against children, and shall not be subject to any distribution otherwise required in section 19-4705, Idaho Code. A fine created under this section shall be a separate written order in addition to any other sentence the court may impose.

The fine contemplated in this section shall be ordered solely as a punitive measure against the defendant, and shall not be based upon any requirement of showing of need by the victim. The fine shall not be used as a substitute for an order of restitution as contemplated in section 19-5304, Idaho Code, nor shall such an order of restitution or order of compensation entered in accordance with section 72-1018, Idaho Code, be offset by the entry of such fine.

A defendant may appeal a fine created under this section in the same manner as any other aspect of a sentence imposed by the court. The imposition of a fine created under this section shall not preclude the victim from seeking any other legal remedy; provided that in any civil action brought by or on behalf of the victim, the defendant shall be entitled to offset the amount of any fine imposed pursuant to

this section against any award of punitive damages.

(2) The felonies for which a fine created under this section may be imposed are those described in:

Section 18-805, Idaho Code (Aggravated arson);
Section 18-905, Idaho Code (Aggravated assault);
Section 18-907, Idaho Code (Aggravated battery);
Section 18-909, Idaho Code (Assault with intent to commit a serious felony);
Section 18-911, Idaho Code (Battery with intent to commit a serious felony);
Section 18-913, Idaho Code (Felonious administration of drugs);
Section 18-1501, Idaho Code (Felony injury to children);
Section 18-1506, Idaho Code (Sexual abuse of a child under the age of sixteen);
Section 18-1506A, Idaho Code (Ritualized abuse of a child);
Section 18-1507, Idaho Code (Sexual exploitation of a child);
Section 18-1508, Idaho Code (Lewd conduct with a child under the age of sixteen);
Section 18-4001, Idaho Code (Murder);
Section 18-4006, Idaho Code (Felony manslaughter);
Section 18-4014, Idaho Code (Administering poison with intent to kill);
Section 18-4015, Idaho Code (Assault with intent to murder);
Section 18-4502, Idaho Code (First degree kidnapping);
Section 18-5001, Idaho Code (Mayhem);
Section 18-5501, Idaho Code (Poisoning food, medicine or wells);
Section 18-6101, Idaho Code (Rape);
Section 18-6108, Idaho Code (Male rape);
Section 18-6501, Idaho Code (Robbery).

Approved March 26, 1993.

CHAPTER 237
(H.B. No. 8)

AN ACT

RELATING TO PUBLIC WORKS CONTRACTORS; AMENDING SECTION 54-1904A, IDAHO CODE, TO ELIMINATE THE REQUIREMENT OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD TO ENFORCE THE PROVISION TO SUSPEND OR REVOKE A CONTRACTOR'S LICENSE IF THE CONTRACTOR FAILS TO PAY INCOME TAXES ON EARNED INCOME; REPEALING SECTION 54-1909, IDAHO CODE; AMENDING SECTION 54-1911, IDAHO CODE, TO GIVE THE REGISTRAR TEN DAYS TO PROCESS COMPLETE APPLICATIONS FOR LICENSURE BEFORE THE BOARD MEETING; AMENDING SECTION 54-1912, IDAHO CODE, TO ELIMINATE THE UNIQUE NUMBERING SEQUENCE REQUIRED ON LICENSES; AMENDING SECTION 54-1913, IDAHO CODE, AS AMENDED BY SECTION 80, CHAPTER 213, LAWS OF 1990, TO ELIMINATE THE REQUIREMENT OF THE BOARD TO NOTIFY THE DEPARTMENTS OF FINANCE AND INSURANCE OF LICENSES THAT HAVE BEEN ISSUED, RENEWED, REVOKED, CANCELLED OR SUSPENDED; AMENDING SECTION 54-1916, IDAHO CODE, TO PROVIDE FOR APPEAL TO THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1904A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1904A. FILING OF NOTICES AND INCOME TAX RETURNS -- PAYMENT OF INCOME TAXES BY CONTRACTORS. Within thirty (30) days after any public works contractor who is required to be licensed pursuant to this chapter has been awarded a contract for construction to be performed within the state of Idaho involving the expenditure of any public moneys, the contract awarding agency shall file with the tax ~~collector~~ commission a signed statement showing the date on which such contract was made or awarded, the names and addresses of the home offices of the contracting parties, including all sub-contractors, the state of incorporation if the party is a corporation, the project number and a general description of the type and location of the work to be performed, the amount of the prime contract and all sub-contracts, and all other relevant information which may be required on forms which may be prescribed by the tax ~~collector~~ commission. Every contractor or sub-contractor whose name appears on any such notice shall be required to file income tax returns with the state tax ~~collector~~ commission and to pay all income taxes which may be due thereon pursuant to law for all years in which any public moneys were received by him in connection with any construction work which was performed within the state of Idaho. ~~A failure to pay any income taxes which may be due thereon, in addition to all other penalties therefor as provided by law, shall constitute a ground for suspension or revocation of license as in this act provided.~~

SECTION 2. That Section 54-1909, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 54-1911, Idaho Code, be, and the same is hereby amended to read as follows:

54-1911. FILING, ISSUANCE AND DENIAL OF LICENSES -- JOINT VENTURE APPLICATIONS -- FEES NOT REFUNDED. Applications for original licenses, together with the fees therefor, shall be filed with the board if received at least ~~thirty~~ ten (~~3~~10) days prior to consideration thereof by the board. After such examination and investigation as the board may require in accordance with the provisions of this act, if no valid reason exists for further investigation of applicant, the board shall at the next meeting fixed by it for the consideration of applications for original licenses, issue a license to applicant permitting him to engage in business as a contractor under the terms of this act for the licensing period designated. If the information brought to the attention of the board concerning the character and integrity of an applicant is such that it would appear proper to deny the application, the applicant shall be notified by registered mail or personal service, to show cause within such time, not less than five (5) days, nor more than thirty (30) days, why the application should not be denied.

~~The board is authorized to waive the thirty (30) day filing period on an application for a license for a joint venture, where all of the~~

~~joint-venture-parties-have-complied-with-and-are-licensed-public-works contractors-under-all-the-provisions-of-this-act.~~

Applications for original licenses filed in accordance with the provisions of this act shall be considered by the board at the four (4) regular meetings of the board provided for in this act and at such special or regular monthly meetings as the board may determine. Fees accompanying original applications under this section are for the administration and enforcement of the provisions of this chapter and shall not be refunded to the applicant.

SECTION 4. That Section 54-1912, Idaho Code, be, and the same is hereby amended to read as follows:

54-1912. EXPIRATION AND RENEWAL OF LICENSES -- FEES. All contractors required by the provisions of this section to be licensed, shall be licensed for a period of twelve (12) consecutive calendar months.

~~There-are-ten-(10)~~ Each licensing periods~~,--each--of--which~~ shall start on the first day of a calendar month and end on the last day of the twelfth month from the date of beginning. ~~The-months--of--November and-December-are-excluded.-The-licensing-period-shall-be-designated-in accordance-with-the-ending-numeral-of-the-license-number,-as-follows:~~

~~(a)--January-31,-first-period;-designated-by-ending-numeral-1~~

~~(b)--February--28--or--29,--second--period;--designated--by-ending numeral-2~~

~~(c)--March-31,-third-period;-designated-by-ending-numeral-3~~

~~(d)--April-30,-fourth-period;-designated-by-ending-numeral-4~~

~~(e)--May-31,-fifth-period;-designated-by-ending-numeral-5~~

~~(f)--June-30,-sixth-period;-designated-by-ending-numeral-6~~

~~(g)--July-31,-seventh-period;-designated-by-ending-numeral-7~~

~~(h)--August-31,-eighth-period;-designated-by-ending-numeral-8~~

~~(i)--September-30,-ninth-period;-designated-by-ending-numeral-9~~

~~(j)--October-31,-tenth-period;-designated-by-ending-numeral-0~~

Licensing periods shall expire at midnight on the last day of the licensing period ~~in-the-year-designated-by-the-license-number-embossed on-the-license-certificate.-The-last-numeral-digit-on-the-license-number--shall-fix-the-license-period-under-the-"staggered-license-system" of-public-works-contractors--licensing--for--the--purpose--of--renewal licensing--and-notice-of-expiration.-During-the-first-year-the-license fee-shall-be-prorated.~~

~~A-license-that-has-once-been-issued-for-any-of--the--above--designated--periods--shall,--upon-renewal,-be-issued-for-the-period-bearing the-same-number,-and-the-license-certificate-shall--show--and--be--the exclusive-proof-of-the-expiration-date-of-license.~~

Application for renewal of a current license prior to expiration date thereof shall authorize operation as a contractor by such licensee until actual issuance of such renewal license for the ensuing year or until the final decision of the board is rendered in any proceeding. Applicant for a renewal of a license issued under this act, shall not be required to take any other or further examination to obtain such renewal license, provided that at the time of such application his license has not been suspended or permitted to lapse or expire for any cause for a period of one (1) year or more. All applications for renewal of license shall be made on forms prescribed by the board and

shall be accompanied by the annual renewal fee and a complete current financial statement on such forms and disclosing such information as shall be required by the board, duly certified as true by the applicant, and if a copartnership, by a member thereof, and if a corporation, by its executive or financial officer; such renewal application shall be filed prior to the first day of such renewal licensing period, otherwise the expired license shall be renewable only after the application and fees therefor shall have been on file with the board at least ~~thirty~~ ten (~~3~~10) days prior to consideration thereof by the board. Fees accompanying renewal applications under this section are for the administration and enforcement of the provisions of this chapter and shall not be refunded to the applicant.

The license issued under this act shall be signed both by the registrar and by the licensee, shall be nontransferable, and shall be displayed in the licensee's main office or chief place of business, and satisfactory evidence of the possession thereof and of the current annual renewal thereof shall be exhibited by licensee upon demand.

A surviving member or members of a licensed copartnership by reason of death shall be entitled to continue in business under such license until the expiration date thereof, provided due application for permission is made to the board within thirty (30) days after death of the member, and the application is approved by the board in accordance with its rules and regulations.

All licensees shall report to the board all changes of personnel, name style or addresses recorded under this act within thirty (30) days after the changes are made.

SECTION 5. That Section 54-1913, Idaho Code, as amended by Section 80, Chapter 213, Laws of 1990, be, and the same is hereby amended to read as follows:

54-1913. RECORDS, LISTS AND INFORMATION. The board shall maintain at its office in Boise City, Idaho, open to public inspection during office hours, a complete~~, indexed~~ record of all retained applications, licenses issued, licenses renewed and all revocations, cancelations and suspensions of licenses, and shall furnish a certified copy of any license issued, upon receipt of the sum of fifty cents (50¢), which certified copy shall be received in all courts and elsewhere as evidence of the facts stated therein. All financial information submitted by applicants is subject to disclosure according to chapter 3, title 9, Idaho Code. Upon the issuance, renewal, revocation, cancelation and/or suspension of a license hereunder, the board shall forthwith furnish the department of administration ~~and the department of finance and insurance~~ with a record thereof.

Whenever funds are available for the purpose, the board shall publish a list of the names and addresses of contractors registered under this act and of the licenses issued, suspended or revoked and such further information with respect to this act and its administration as the board deems proper. The board may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other state as deemed advisable, and at such intervals as deemed necessary, whenever funds therefor are avail-

able. Copies of the lists may also be furnished by the board upon request to any firm or individual upon payment of a reasonable fee fixed by the board.

Whenever funds are available for the purpose, the board may publish and disseminate to licensees of the board and to public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this act as deemed necessary to carry out its purposes.

SECTION 6. That Section 54-1916, Idaho Code, be, and the same is hereby amended to read as follows:

54-1916. COURT REVIEW -- PROCEDURE. The applicant or licensee, as the case may be, shall have the right to appeal to the district court of the ~~third~~ fourth judicial district of the state of Idaho, from any decision of the board in refusing, cancelling, revoking or suspending a license. Such appeal shall be taken by serving a written notice thereof on the registrar and filing the same with the clerk of said district court within twenty (20) days after entry of record of the board's final decision refusing, cancelling, revoking or suspending any license.

The registrar shall prepare, certify and file with the clerk of said district court within thirty (30) days after receipt of such notice, true copies of the decision appealed from and of the application for license and of all documents and exhibits filed or introduced in connection therewith. The person appealing from the decision of the board, at the time of serving notice on the registrar, shall pay to him the sum of twenty cents (20¢) for each one hundred (100) words of the transcript of the records and proceedings certified by the registrar to the reviewing court. The matter upon appeal shall thereupon be heard de novo by said district court, without a jury, either in open court or by the judge in chambers, at his discretion, and shall be heard on questions of both law and fact. The district court shall have power to either modify, affirm or reverse the action of the board, and upon the entry of the judgment of said district court a certified copy thereof shall be forthwith filed with the board and its decision shall be modified to conform to the judgment of said court. Appeals may be taken from the judgment of said district court to the Supreme Court of Idaho by either party by serving written notice thereof on the adverse party and filing the same in said district court within thirty (30) days after entry of said judgment, but otherwise said appeal shall be had in the same manner that appeals are taken and records prepared on appeal in civil actions.

On any appeal to the district court by a licensee, the court may, in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than one thousand dollars ($1,000~~.00~~), guaranteeing the compliance by the licensee with specific conditions imposed upon him by the board's decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the district court.

SECTION 7. This act shall be in full force and effect on and after January 1, 1994.

Approved March 27, 1993.

CHAPTER 238
(H.B. No. 34)

AN ACT

RELATING TO COMPENSATION FOR VENDORS AND SPECIAL DISTRIBUTORS OF LIQUOR; AMENDING SECTION 23-305, IDAHO CODE, TO CLARIFY HOW COMPENSATION FOR VENDORS IS PAID.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-305, Idaho Code, be, and the same is hereby amended to read as follows:

23-305. COMPENSATION OF VENDORS AND SPECIAL DISTRIBUTORS. Vendors and special distributors shall receive uniform compensation, which compensation shall be considered a part of the cost of sales, according to classifications, fixed by the dispensary.

Approved March 27, 1993.

CHAPTER 239
(H.B. No. 63, As Amended)

AN ACT

RELATING TO ACCOUNTANTS; REPEALING SECTION 54-202, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-202, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 54-204, IDAHO CODE, AS AMENDED BY SECTION 8, CHAPTER 30, LAWS OF 1991, IDAHO CODE, TO PROVIDE FOR RULES WHICH MAY BE ADOPTED BY THE IDAHO STATE BOARD OF ACCOUNTANCY, TO PROVIDE FOR INVESTIGATIONS OF COMPLAINTS AGAINST LICENSEES, TO PROVIDE FOR A PROTECTIVE ORDER IN DISCIPLINARY PROCEEDINGS, TO PROVIDE FOR ISSUANCE AND ENFORCEMENT OF SUBPOENAS, TO PROVIDE FOR ACTIONS PURSUANT TO THE IDAHO TORT CLAIMS ACT FOR CLAIMS AGAINST THE BOARD OR ITS EMPLOYEES AND TO CORRECT TERMINOLOGY; AMENDING SECTION 54-205, IDAHO CODE, TO PROVIDE FOR MEETINGS AND COMPENSATION OF THE BOARD, TO PROVIDE DUTIES OF THE EXECUTIVE DIRECTOR AND TO CORRECT TERMINOLOGY; REPEALING SECTION 54-206, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-206, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING SECTION 54-208, IDAHO CODE, TO PROVIDE EDUCATION REQUIREMENTS OF APPLICANTS FOR ADMISSION TO EXAMINATION AS A CERTIFIED PUBLIC ACCOUNTANT; REPEALING SECTION 54-209, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-209, IDAHO CODE, TO PRO-

VIDE EXPERIENCE REQUIREMENTS FOR LICENSURE AS A CERTIFIED PUBLIC ACCOUNTANT; REPEALING SECTION 54-210, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-210, IDAHO CODE, TO PROVIDE FOR LICENSURE BY RECIPROCITY OR TRANSFER OF EXAMINATION GRADES; REPEALING SECTION 54-211, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-211, IDAHO CODE, TO PROVIDE FOR ISSUANCE, RENEWAL, VOLUNTARY SUSPENSION, RETIREMENT AND REINSTATEMENT OF LICENSES AND TO PROVIDE FEES; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-212, IDAHO CODE, TO PROVIDE FOR GENERAL FEES, INCLUDING EXAMINATION FEES, LATE FEES AND FEES FOR TEMPORARY PRACTICE AND PRACTICE UNIT REGISTRATION; REPEALING SECTION 54-213, IDAHO CODE; AMENDING SECTION 54-212, IDAHO CODE, TO REDESIGNATE THE SECTION, AND TO CORRECT TERMINOLOGY; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-214, IDAHO CODE, TO PROVIDE FOR QUALITY REVIEW AND PRACTICE UNIT REGISTRATION; AMENDING SECTION 54-214, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REMOVE OBSOLETE LANGUAGE AND TO CORRECT TERMINOLOGY; AMENDING SECTION 54-215, IDAHO CODE, TO REDESIGNATE THE SECTION, TO ADD ADDITIONAL REQUIREMENTS FOR TEMPORARY PRACTICE AND TO CORRECT TERMINOLOGY; AMENDING SECTION 54-216, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REMOVE OBSOLETE LANGUAGE AND TO CORRECT TERMINOLOGY; REPEALING SECTIONS 54-218 AND 54-218A, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-218, IDAHO CODE, TO PROHIBIT COMMISSIONS AND CONTINGENT FEES; AMENDING SECTION 54-217, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE ADDITIONAL DISCIPLINARY ACTION WHICH MAY BE TAKEN BY THE BOARD AGAINST LICENSEES, TO PROVIDE FOR ADMINISTRATIVE PENALTIES, TO PROVIDE FOR DISCIPLINARY ACTION ON THE BASIS OF A SINGLE ACT PROHIBITED BY THE CHAPTER AND TO CORRECT TERMINOLOGY; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-220, IDAHO CODE, TO PROHIBIT THE USE OF PARTICULAR TITLES OR DESIGNATIONS WITHOUT A VALID LICENSE TO PRACTICE; REPEALING SECTION 54-221, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-221, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF A REPORT; AMENDING SECTION 54-219, IDAHO CODE, TO REDESIGNATE THE SECTION, TO INCREASE THE CRIMINAL FINE FOR VIOLATIONS OF THE CHAPTER AND TO CORRECT TERMINOLOGY; AMENDING SECTION 54-220, IDAHO CODE, TO REDESIGNATE THE SECTION, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 54-222, IDAHO CODE, TO REDESIGNATE THE SECTION, AND TO CORRECT TERMINOLOGY; AMENDING SECTION 54-223, IDAHO CODE, TO REDESIGNATE THE SECTION, AND TO CORRECT TERMINOLOGY; REPEALING SECTION 54-224, IDAHO CODE; REPEALING SECTION 54-203, IDAHO CODE; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-203, IDAHO CODE, TO PROVIDE FOR THE IDAHO STATE BOARD OF ACCOUNTANCY, TO PROVIDE FOR THE MEMBERSHIP OF THE BOARD, TO PROVIDE FOR THE MANNER OF APPOINTMENT OF MEMBERS OF THE BOARD AND TO PROVIDE FOR FILLING VACANCIES ON THE BOARD; AMENDING CHAPTER 2, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-226, IDAHO CODE, TO PROVIDE FOR INAPPLICABILITY OF THE CHAPTER; AND PROVIDING AN EFFECTIVE DATE FOR SECTION 17 OF THE ACT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-202, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-202, Idaho Code, and to read as follows:

54-202. LEGISLATIVE INTENT. It is the policy of this state, and the purpose of this chapter, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial and governmental enterprises. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications shall not be permitted to hold themselves out as having special competence or to offer such assurance; that the professional conduct of persons licensed as having special competence in accountancy be regulated in all aspects of the practice of public accountancy; that a public authority competent to prescribe and assess the qualifications and to regulate the professional conduct of practitioners of public accountancy be established; and that the use of titles relating to the practice of public accountancy that are likely to mislead the public as to the status or competence of the persons using such titles be prohibited.

SECTION 3. That Section 54-204, Idaho Code, as amended by Section 8, Chapter 30, Laws of 1991, Idaho Code, be, and the same is hereby amended to read as follows:

54-204. POWERS AND DUTIES. A. The Idaho state board of accountancy, in addition to the other powers and duties set forth in this ~~act~~ chapter, shall have the following powers and duties:

(1) To ~~prescribe, promulgate, establish~~ adopt and amend rules ~~and regulations to carry into effect the provisions of this act, and to promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, professional competence, public responsibility and dignity in the profession of public accountancy. Such rules and regulations shall be adopted~~ in accordance with the provisions of the ~~A~~administrative ~~P~~procedure ~~A~~act, chapter 52, title 67, Idaho Code, governing its administration and the enforcement of this chapter and the conduct of licensees including, but not limited to:

(a) Rules governing the board's meetings and the conduct of its business;

(b) Rules of procedure governing the conduct of investigations and hearings by the board;

(c) Rules specifying the education qualifications required for the issuance of certificates, the experience required for initial

issuance of certificates and the continuing professional education required for renewal of licenses;

(d) Rules of professional conduct directed to controlling the quality and probity of the practice of public accountancy by licensees, and dealing among other things with independence, integrity and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;

(e) Rules specifying actions and circumstances that shall be deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;

(f) Rules regarding quality reviews that may be required to be performed under the provisions of this chapter;

(g) Rules for the method and substance of examination for licenses to practice as certified public accountants. The board shall provide for examination of applicants, at least annually, at such times and places as circumstances and applications may warrant. The board shall use all or part of the uniform CPA examination, and may use any related service available from the American institute of certified public accountants (AICPA) and the national association of state boards of accountancy (NASBA), or an examination and services consistent with standards of the AICPA examination. The board may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder. The board shall adopt a system to maintain the security and integrity of the examination process; and

(h) Such other rules as the board may deem necessary or appropriate to implement or administer the provisions and purposes of this chapter.

(2) ~~To provide and conduct examinations of applicants for certificates, at least annually, at such times and places as circumstances and applications may warrant. To prescribe rules and regulations for the method of examination for certificates and licenses to practice as certified public accountants. Such examination may include, but is not to be limited to, any of the following subject matter: theory of accounts, practical accounting, auditing, commercial law, and professional ethics. Proper notice of time and place for such examination shall be given and selected pursuant to rules and regulations adopted by the board.~~

~~(3)~~ To issue original certificates of qualification and~~/or~~ licenses to practice as certified public accountants ~~or public accountants~~ to such applicants as may be qualified by reciprocity, transfer of examination grades or by examination.

(~~4~~3) To charge and collect from all applicants, certificate holders, and licensees such fees as are provided by this ~~act~~ chapter and prescribed by rules ~~and regulations~~ of the board.

(~~5~~4) To initiate or receive complaints, cause the same to be investigated, ~~instigate~~ initiate proceedings, and conduct hearings or proceedings pursuant to ~~section 54-217~~ chapter 2, title 54, Idaho Code. The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the board. The board may find proba-

ble cause or lack of probable cause to initiate disciplinary proceedings upon the basis of the report or may return the report to the investigating officer for further investigation.

(a) In order to protect the interests of a complainant, witness, third party or defendant, the board may upon application and for good cause shown, issue a protective order, consistent with section 9-340, Idaho Code, prohibiting the disclosure of specific information otherwise not privileged and confidential and direct that the proceedings be conducted so as to implement the order.

(b) In carrying into effect the provisions of this chapter, the board may subpoena witnesses and compel their attendance, and also may require the submission of books, papers, documents or other pertinent data in any disciplinary matters or in any case wherever a violation of the provisions of this chapter is alleged. Upon failure or refusal to comply with any such order of the board, or upon failure to honor its subpoena, the board may apply to the court in the district where the witness resides to enforce compliance.

(6~~7~~) To authorize by written agreement the bureau of occupational licenses as agent to act in its interest.

(7~~6~~) To review and act upon actions taken by the advisory committee.

(7) Any action, claim or demand to recover money damages from the board or its employees which any person is legally entitled to recover as compensation for the negligent or otherwise wrongful act or omission of the board or its employees, when acting within the course and scope of their employment, shall be governed by the Idaho tort claims act, chapter 9, title 6, Idaho Code. For purposes of this subsection, the term "employees" shall include special assignment members of the board and other independent contractors while acting within the course and scope of their board related work.

All hearings, investigations or proceedings conducted by the board shall, unless otherwise requested by the concerned party, be subject to disclosure according to chapter 3, title 9, Idaho Code.

B. The public accountants' advisory committee, in addition to other powers and duties set forth in this ~~act~~ chapter, and subject to approval by the board, all have the following powers and duties:

(1) To ~~prescribe;--promulgate;--establish~~ recommend to the board for adoption and amendment rules ~~and regulations~~ to carry into effect the provisions of this ~~act~~ chapter, and to ~~promulgate~~ recommend adoption and amendment of rules of professional conduct appropriate to establish and maintain a high standard of integrity, professional competence, public responsibility and dignity by those persons licensed as public accountants. Such rules and regulations shall be adopted in accordance with the ~~A~~administrative ~~P~~procedure ~~A~~act, chapter 52, title 67, Idaho Code.

(2) To recommend for licensing as a public accountant such applicants as may be qualified pursuant to ~~the act~~ this chapter.

(3) To receive complaints, cause the same to be investigated, ~~instigate~~ initiate proceedings, and conduct hearings or proceedings pursuant to chapter 2, title 54, Idaho Code.

(4) To provide and conduct examinations of applicants for licensure as public accountants as required by chapter 2, title 54, Idaho

Code.

(5) To authorize by written agreement the bureau of occupational licenses, as agent, to act in its interest.

SECTION 4. That Section 54-205, Idaho Code, be, and the same is hereby amended to read as follows:

54-205. MEETINGS -- COMPENSATION -- EXECUTIVE ~~SECRETARY~~ DIRECTOR. ~~A.~~ (1) The board shall have its principal office at Boise, Idaho. Three (3) members of the board shall constitute a quorum, a majority of whom may act~~, and~~. ~~T~~the board shall meet no less than ~~twice~~ three (3) times each year; provided, however, special meetings may be called at any time during the year after notice to all members of the board of such special meetings. The board shall elect annually a ~~chairman~~ chair, a vice ~~chairman~~ chair, a secretary and a treasurer from its members. The offices of secretary and treasurer may be in the same person. The members of the board shall be compensated as provided by section 59-509(~~f~~i), Idaho Code.

The board shall have the power to name an executive ~~secretary~~ director who need not be a member of the board or a ~~member licensed to practice as a certified public accountant or public accountant~~ licensee and who may be a full-time or part-time employee of the state of Idaho. The board shall prescribe the duties of ~~such~~ the executive ~~secretary and these~~ director. Such duties shall include but are not limited to:

(a) Maintenance of a licensee registry;

(b) ~~T~~the preparation of all papers and records ~~under this act~~ for the board and the advisory committee~~,~~; and

(c) ~~shall include such e~~Enforcement or investigative activities as ~~to~~ directed by the board ~~may from time to time appear advisable~~.

~~B.~~(2) Three (3) members of the advisory committee shall constitute a quorum, a majority of whom may act, and the ~~council~~ committee shall meet no less than once each year. The advisory committee shall elect annually a ~~chairman~~ chair, a vice ~~chairman~~ chair, a secretary and a treasurer from its members. The offices of secretary and treasurer may be in the same person. The members of the advisory committee shall be compensated as provided by section 59-509(~~f~~i), Idaho Code.

SECTION 5. That Section 54-206, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-206, Idaho Code, and to read as follows:

54-206. DEFINITIONS. As used in this section:

(1) "Academic year" means that period of study, at a college or university, approved by the board, necessary to accumulate the equivalent of thirty (30) semester credit hours.

(2) "AICPA" means the American institute of certified public accountants.

(3) "Applicant" means any person having the requisite qualifications who makes application to the board for examination, or a certificate and license under the provisions of this chapter.

(4) "Audit" means an examination of financial statements conducted in accordance with generally accepted auditing standards, to determine whether, in the auditor's opinion, the statements are fairly presented and conform with generally accepted accounting principles, or if applicable, with another comprehensive basis of accounting.

(5) "Board" means the Idaho state board of accountancy.

(6) "Certificate" means that document issued by the board upon original approval of a license. The original certificate does not constitute licensure and a person cannot hold himself or herself out to the public unless a current and valid annual license has been issued by the board.

(7) "Certified public accountant" means any person who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a certified public accountant.

(8) "Client" means the person or entity which retains a practice unit engaged in the practice of public accounting for the performance of professional services with or without compensation.

(9) "Compilation" means presenting in the form of historical or prospective financial statements, in accordance with standards adopted by the AICPA, information that is the representation of management or owners without undertaking to express any assurance on the statements.

(10) "Financial statements" mean a presentation of historical or prospective financial data, which may include accompanying notes, intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with a comprehensive basis of accounting.

(11) "Firm" means a proprietorship, partnership, corporation, or any other form of organization permitted by Idaho law, engaged in the practice of public accounting of which all proprietors, partners, officers, shareholders or members are licensed under the provisions of this chapter.

(12) "Good moral character" means lack of a history of dishonest dealings or a felonious act.

(13) "Hold out" or "holding out" means providing or offering to provide work or services as a certified public accountant or licensed public accountant. Holding out includes, but is not limited to, display of a license, or oral or written representation that the person holds a current and valid license or is authorized to practice public accounting. Written representation can include the certified public accountant, licensed public accountant, or any other designation cited in section 54-220, Idaho Code, which may appear on a letterhead, business card, office sign or advertisement.

(14) "License" means that permit issued by the board upon original approval and on an annual basis permitting a qualified person to practice as a certified public accountant or licensed public accountant in the state of Idaho.

(15) "Licensed public accountant" means any person who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a licensed

public accountant.

(16) "Licensee" means the holder of a current valid license issued by this state authorizing that person to practice public accountancy.

(17) "Member" means a licensed person who has been admitted to membership in a firm.

(18) "Partnership" means an association of two (2) or more licensees to carry on as co-owners a business for profit for the practice of public accountancy.

(19) "Person" means any natural living person.

(20) "Practice of public accounting" means offering to perform or performing, for a client or potential client, one (1) or more types of services involving the use of accounting or auditing skills, or one (1) or more types of management, financial advisory or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters, while holding oneself out in such manner as to state or imply that one is a licensee.

(21) "Practice unit" means a firm with which a licensee engaged in the practice of public accounting is affiliated, including a proprietorship, partnership, professional corporation or any other form of organization permitted by Idaho law.

(22) "Professional corporation" means either:

(a) A professional public accounting corporation organized pursuant to chapter 13, title 30, Idaho Code, or any other form of organization permitted by Idaho law, the shareholders of which are all persons licensed as certified public accountants or licensed public accountants; or

(b) A foreign corporation certified by the secretary of state to do business in public accountancy in Idaho, provided that any officer, shareholder, agent or employee of the corporation remains personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional accounting services on behalf of the corporation in the state of Idaho.

(23) "Professional services" mean any services performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

(24) "Proprietorship" means a business for the practice of public accountancy which is owned by a licensee.

(25) "Quality review" means a board approved study, appraisal or review of one (1) or more aspects of the professional work of a practice unit by a person or persons who are licensed under this chapter or by another state and who are independent of the practice unit being reviewed.

(26) "Report," when used with reference to financial statements, means an opinion or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or she is an accountant or audi-

tor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or special knowledge or competence.

(27) "Review" means performing inquiry and analytical procedures in accordance with standards adopted by the AICPA that provide a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

(28) "State" means any state, territory or insular possession of the United States, or the District of Columbia.

SECTION 7. That Section 54-208, Idaho Code, be, and the same is hereby amended to read as follows:

54-208. EXAMINATION -- EDUCATION -- QUALIFICATIONS. (1) An applicant for admission to examination as a certified public accountant shall:

(a) ~~b~~Be eighteen (18) years of age or older,

(b) ~~b~~Be of good moral character, ~~and~~

(c) ~~b~~Be a resident, have been a resident, or intend~~s~~ to immediately become a resident of the state of Idaho~~.~~,

(d) Be approved by the board for admission to the examination, and

(e) Ceomply with ~~either~~ subparagraph (~~1~~i) or (~~2~~iii) hereof; provided, however, that subparagraphs (i) and (iii) hereof shall not apply to any applicant who has qualified under prior existing law and has made written application to the board and such application is on file with the board prior to the effective date of this chapter.

(~~1~~i) ~~he shall present s~~Satisfactory evidence ~~that he has successfully completed, or will successfully complete within ninety (90) days after the examination, at least four (4) academic years of study leading toward a degree, the required credits and courses to be prescribed by rules and regulations of the board; or~~ in the form of an official transcript received directly from the school registrar indicating the credits and degree received shall be presented to the board to demonstrate successful completion of the education requirements as established in subparagraph (ii) hereof. Applicants who will complete the educational requirements within ninety (90) days of the examination shall be allowed to sit for the examination provided that prior to the release of examination grades satisfactory evidence is submitted verifying that the required education was completed within ninety (90) days of the examination.

(~~2~~ii) ~~he shall show to the satisfaction of the board that he~~

~~has-achieved-the-equivalent-of-the-educational-qualifications required--by--subparagraph--(i)--of--this--section;~~ Education requirements. Until June 30, 2000, the board shall require four (4) academic years of study for a baccalaureate degree or its equivalent, the required credits and courses to be prescribed by the rules of the board. After July 1, 2000, the board shall require a minimum of one hundred fifty (150) collegiate level semester hours, or two hundred twenty-five (225) quarter hours, of education, with a concentration in accounting, auditing and business, including a baccalaureate degree or its equivalent at a college or university acceptable to the board. The total educational program shall include subjects and hours approved by the board, as established by rule.

(3iii) ~~provided;--however;--subparagraphs--(i)-and-(2)-hereof shall-not-apply-to-any-applicant-who-has-qualified-under--the prior--existing--law-and-who-has-made-his-written-application to-the-board-and-such-application-is-on-file-with--the--board prior--to--the-effective-date-of-this-act~~ An applicant who is unable to meet the education requirements specified in subparagraph (ii) hereof shall show, to the satisfaction of the board, achievement of equivalency to the education requirements before and after July 1, 2000, as specified in subparagraph (ii) hereof. Equivalency standards shall be established by board rule.

(2) None of the education requirements specified in subparagraph (i), (ii) or (iii) hereof shall apply to an applicant who is a licensed public accountant pursuant to this chapter.

SECTION 8. That Section 54-209, Idaho Code, be, and the same is hereby repealed.

SECTION 9. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-209, Idaho Code, and to read as follows:

54-209. EXPERIENCE. An applicant who successfully passes the examination, with standards no less than those prescribed by the board's rules for examination of candidates in Idaho, shall receive a license as a certified public accountant if the applicant has completed, or upon completion of the following:

(1) The applicant, in obtaining experience, must be supervised by a certified public accountant who holds a current valid license in any state or by a licensed public accountant who shall certify that experience obtained under either subsection (a) or (b) of this section consists of one (1) or more types of services involving the use of accounting or auditing skills, or one (1) or more types of management, financial advisory or consulting skills, or the preparation of tax returns or the furnishing of advice on tax matters.

(a) Two (2) years of full-time public accounting employment, or one thousand nine hundred fifty-six (1,956) minimum hours per year; or

(b) Experience of a character and for a length of time which is, in the opinion of the board, substantially equivalent to the requirements of subsection (a) of this section. Rules shall be adopted by the board establishing such experience levels.

(2) The board by order shall also have authority to approve programs with private industry, nonprofit and governmental entities to establish acceptable experience substantially equivalent to subsection (1)(a) of this section.

SECTION 10. That Section 54-210, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-210, Idaho Code, and to read as follows:

54-210. RECIPROCITY -- TRANSFER OF EXAMINATION GRADES -- QUALIFICATIONS. (1) An applicant for certificate and license by reciprocity to practice as a certified public accountant in Idaho must:

(a) Be eighteen (18) years of age or older;

(b) Be of good moral character;

(c) Have obtained the education and passed the uniform CPA examination with standards no less than those that would have been required at the time in Idaho. The requirements of education and the Idaho standards relating to passage of the uniform CPA examination shall be waived if the applicant has no less than five (5) years' experience as determined by the board, provided that the experience or its equivalent was obtained after original licensure as a certified public accountant and within the ten (10) years immediately preceding the reciprocity application; and

(d) Have completed the necessary experience, continuing professional education, and board approved ethics examination required for issuance of a license to practice public accounting in Idaho and hold a current license in good standing in another licensing jurisdiction.

(2) An applicant for certificate and license to practice as a certified public accountant in Idaho by transfer of examination grades from another licensing jurisdiction must:

(a) Be eighteen (18) years of age or older;

(b) Be of good moral character;

(c) Have obtained the necessary education and have passed the uniform CPA examination with standards no less than those prescribed by the board's rules for examination candidates in Idaho; and

(d) Possess experience qualifications as required under section 54-209, Idaho Code.

SECTION 12. That Section 54-211, Idaho Code, be, and the same is hereby repealed.

SECTION 13. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be

known and designated as Section 54-211, Idaho Code, and to read as follows:

54-211. LICENSES -- LICENSING PERIOD -- REINSTATEMENT -- VOLUNTARY SUSPENSION -- RETIREMENT -- FEES. (1) The board shall issue original certificates and licenses, and renewal and reinstatement licenses to practice as a certified public accountant, and renewal and reinstatement licenses to practice as a licensed public accountant to persons who have qualified therefor in accordance with the provisions of this chapter and the rules of the board. A certificate and license, once issued, shall continue in effect so long as the holder thereof complies with the provisions of this chapter and the rules and orders of the board.

(a) Original. The board shall collect an original license fee upon board approval of an original license to practice as a certified public accountant in the state of Idaho in an amount not to exceed two hundred dollars ($200) as prescribed by the rules of the board. Those individuals meeting the requirements for original licensure in Idaho, pursuant to the provisions of this chapter and the rules of the board, shall be issued a license effective until the end of the fiscal year, which shall extend from July 1 through June 30, in which the original license was granted. The license shall then be subject to annual renewal.

(b) Renewal. The board shall collect an annual license fee from all licensees by July 1 of each year in an amount not to exceed two hundred dollars ($200) as prescribed by the rules of the board. Those persons meeting the requirements of subparagraphs (i), (ii), (iii) and (iv) of this subsection for license renewal shall be issued a license effective for a period of one (1) year through the last day of June after its issuance. Requirements include:

(i) Good moral character;

(ii) Completion of continuing professional education as specified by the board's rules;

(iii) Identification, in the renewal application, of the practice unit with which the licensee is affiliated; and

(iv) Where applicable, verification of satisfactory completion of a quality review program by the practice unit with which the licensee is affiliated, pursuant to section 54-214, Idaho Code, and the rules prescribed by the board.

(c) Inactive status. Any licensee in current compliance with the provisions of this chapter who chooses not to practice or hold himself or herself out to provide work or services as a certified public accountant or licensed public accountant may apply to suspend his or her license. An individual who holds out or practices public accounting, as defined in section 54-206, Idaho Code, shall not qualify for inactive status.

(d) Retired. After a person reaches the age of sixty (60) years, or in the event of a disability preventing continued practice, the certificate of a certified public accountant or licensed public accountant may, upon application to the board by the holder, be placed by the board in retired status. Retired status shall allow the holder to retain the wall certificate and remain on the

board's mailing list. The annual renewal fee for retired status shall not exceed fifty dollars ($50.00) as prescribed by the rules of the board. An individual who holds out or practices public accounting, as defined in section 54-206, Idaho Code, shall not qualify for retired status.

(e) Reinstatement. Any certificate and license suspended for non-payment of the annual renewal fee, or a certificate in retired or inactive status, may be reinstated upon completion of an application supplied by the board along with payment of a reinstatement fee in an amount not to exceed five hundred dollars ($500), as prescribed by the rules of the board. In addition, the board shall require the applicant to meet the qualifications of subparagraphs (i), (ii), (iii) and (iv) of subsection (b) of this section. Reinstatement following involuntary suspension shall be governed by the terms of the board's order of involuntary suspension.

(2) Applicants for initial issuance or renewal of licenses under this section shall in their application list all states in which they have applied for or hold a license to practice public accountancy.

(3) Applicants shall notify the board in writing, within thirty (30) days after its occurrence of:

(a) Any felony charges; or

(b) The issuance, denial, restriction, revocation or suspension of a certificate, license or permit by another state or by any federal agency.

SECTION 14. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-212, Idaho Code, and to read as follows:

54-212. GENERAL FEES. The board, as prescribed by its rules, may charge an amount not to exceed:

(1) Three hundred dollars ($300) for examination, or application for licensure by reciprocity or transfer of examination grades.

(2) Twenty-five dollars ($25.00) for any certificate, original or replacement, to be issued as herein provided.

(3) Fifty dollars ($50.00) for administrative services, including, but not limited to, review of examination papers and release of information to other boards for purposes of licensure.

(4) Three hundred dollars ($300) for late fees, including late filing of the annual license renewal and continuing professional education report.

(5) Two hundred dollars ($200) for temporary practice registration.

(6) Two hundred dollars ($200) for practice unit registration.

SECTION 15. That Section 54-213, Idaho Code, be, and the same is hereby repealed.

SECTION 16. That Section 54-212, Idaho Code, be, and the same is hereby amended to read as follows:

54-21~~2~~3. GRANDFATHER CLAUSE. Individuals who, on ~~the effective~~

~~date of this act~~ July 1, 1993, hold certified public accountant ~~certificates~~ and licensed public accountant licenses heretofore issued under the laws of this state, ~~shall not be required to secure additional certificates under this act, but shall otherwise be subject to all the provisions of this act; and such certificates heretofore issued~~ shall, for all purposes, be considered ~~certificates~~ licensees under this ~~act~~ chapter and subject to the provisions thereof.

SECTION 17. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-214, Idaho Code, and to read as follows:

54-214. QUALITY REVIEW -- PRACTICE UNIT REGISTRATION. (1) All individuals engaged in the practice of public accounting shall be affiliated with a practice unit. All practice units engaged in practice in this state shall be required to register with the board on an annual basis. When registering annually, each practice unit shall indicate if it issues reports on financial statements.

The board may require by rule that all practice units issuing reports undergo quality reviews, on either a uniform or random basis, conducted no more frequently than once every three (3) years in such manner and producing such satisfactory results as the board may specify; provided however, that any rule imposing such requirement shall be adopted reasonably in advance of the time when compliance is required and shall include reasonable provision for compliance by a practice unit if it shows that it has undergone a satisfactory quality review performed for other purposes which was substantially equivalent to quality reviews generally required pursuant to this subsection and completion of such review was within the three (3) years immediately preceding the registration period.

(2) Information discovered solely as a result of a practice unit's quality review shall not be grounds for suspension or revocation of a license.

(3) Each practice unit shall be required to show that each owner, partner, officer, member or shareholder who regularly works in this state, and each employee holding a certificate who regularly works in this state holds a valid individual license to practice issued under the provisions of this chapter and that each nonresident partner, officer, member or shareholder holds a certificate and is licensed to practice public accountancy in some other state.

(4) Each practice unit shall be required to register each office of the firm within this state with the board and to show that each such office is under the charge of a person holding a valid license to practice issued under the provisions of this chapter or the corresponding provision of prior law.

SECTION 18. That Section 54-214, Idaho Code, be, and the same is hereby amended to read as follows:

~~52-214~~54-215. PUBLIC ACCOUNTANTS -- REGISTRATION. Any person (~~a~~1) who is a resident of this state or has a place of business herein, and (~~b~~2) who has attained the age of eighteen (18) years, and (~~c~~3) who is

of good moral character, and (d4) who ~~meets the requirements of paragraph (1), (2) or (3) hereof may register with the board as a public accountant.~~

~~(1) Persons who on January 1, 1976, as determined on an individual basis by the advisory committee, held themselves out to the public as public accountants within this state in the practice of public accounting as their principal occupation and who have made application to the advisory committee between July 1, 1976, and July 1, 1977, for licensure as a public accountant.~~

~~(2) Persons~~ was serving in the armed forces of the United States ~~of America~~ on July 1, 1976, ~~who~~ and immediately prior to entering such service held ~~themselves~~ himself or herself out to the public as a public accountants and ~~were~~ was engaged within this state in the practice of public accounting as ~~their~~ his or her principal occupation may register with the board as a licensed public accountant. In the case of any such persons, the time for registration shall be extended for a period of six (6) months from the time such person is separated from active duty with such service.

~~(3) Persons who on January 1, 1976, hold senior accounting positions as determined by the advisory committee, as employees of city, county, state or federal governments and who meet the experience requirements of section 54-210(2), Idaho Code, may file with the advisory committee between July 1, 1976, and July 1, 1977, an application for licensure as a public accountant. The one (1) year period of time for filing an application may be extended for one (1) year by filing with the advisory committee between July 1, 1976, and July 1, 1977, a letter of intent to enter the practice of public accounting. In order for a person to be licensed as a public accountant pursuant to this subsection, the applicant must also pass an examination administered by the advisory committee. To retain such license, the licensee must commence the practice of public accounting on a full time basis within ninety (90) days after receipt of such license and continue such practice for one (1) year.~~

~~The advisory committee shall charge a fee not to exceed one hundred dollars ($100) for application for licensure hereunder.~~

SECTION 19. That Section 54-215, Idaho Code, be, and the same is hereby amended to read as follows:

54-215~~6~~. TEMPORARY PRACTICE. ~~Nothing in this act shall prohibit a~~ A certified public accountant or licensed public accountant of another state or ~~any accountant of a foreign~~ country holding a comparable ~~certificate, degree or~~ valid and unrevoked license which permits him to practice therein, ~~from~~ may temporarily ~~practicing (~~ practice for a period not exceeding thirty (30) days in any calendar year) in this state ~~on professional business incident to his regular practice~~, provided the individual or the affiliated practice unit makes advance written notification to the board and complies with all provisions of this chapter and rules of the board during the period of temporary practice. This requirement does not apply to a certified public accountant or licensed public accountant affiliated with an Idaho registered practice unit for other than quality review purposes, provided that person does not practice in Idaho more than six (6) months in any

calendar year.

SECTION 20. That Section 54-216, Idaho Code, be, and the same is hereby amended to read as follows:

54-216~~7~~. STATE BOARD OF ACCOUNTANCY ~~FUND~~ ACCOUNT. ~~The state board of certified public accountancy fund, established by section 2, chapter 263, laws of 1974, shall hereafter be known and designated as the Idaho state board of accountancy fund, which fund shall continue as a separate fund appropriated to carry out the purposes and objects of this act. All moneys in the state board of certified public accountancy fund on the effective date of this act shall be moneys in the Idaho state board of accountancy fund.~~ All fees, charges and fines of every kind collected by the board under the provisions of this ~~act~~ chapter shall be deposited in the state treasury to the credit of the Idaho state board of accountancy ~~fund~~ account. All such moneys as may hereafter come into the Idaho state board of accountancy ~~fund~~ account are hereby appropriated to carry out the purposes and objects of this ~~act~~ chapter, and for payment of all costs and expenses incurred in connection therewith. No other state funds shall be expended for the purposes of this ~~act~~ chapter. Moneys shall be paid out of the ~~fund~~ account upon warrants drawn by the state auditor upon the presentation of proper vouchers approved by the Idaho state board of accountancy. Such claims and vouchers will be subject to such examination by the board of examiners as are other claims against the state.

SECTION 21. That Sections 54-218 and 54-218A, Idaho Code, be, and the same are hereby repealed.

SECTION 22. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-218, Idaho Code, and to read as follows:

54-218. PROHIBITION -- COMMISSIONS AND CONTINGENT FEES. (1) A licensee engaged in the practice of public accounting or who holds out as a certified public accountant or as a licensed public accountant shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others. This does not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons.

(2) A licensee engaged in the practice of public accounting or who holds out as a certified public accountant or as a licensed public accountant shall not offer or perform professional services for a fee which is contingent upon the findings or results of such services; provided however, that this does not apply to professional services involving federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee, nor does it apply to professional services for which the fees are fixed by courts or other public authorities, and which are indeterminate in amount at the time the professional services are undertaken.

SECTION 23. That Section 54-217, Idaho Code, be, and the same is hereby amended to read as follows:

54-21~~7~~9. LICENSE -- RESTRICTION, REVOCATION, SUSPENSION OR DENIAL -- CAUSES -- COST RECOVERY -- ADMINISTRATIVE PENALTIES. (1) After notice and hearing ~~as provided by~~ in accordance with the provisions of chapter 52, title 67, Idaho Code, for cause shown, the board may revoke, suspend, refuse to renew, administratively penalize, reprimand, restrict or place on probation the holder of a certificate or license, or refuse to issue any certificate or any license to an applicant, ~~or may censure, fine or reprimand the holder of any such certificate or license,~~ for any one (1) of the following causes:

(~~1~~a) Any false statement with the intent to mislead or deceive the board or its members in or in connection with any application; or, cheating or any attempt to cheat in an examination.

(~~2~~b) Fraud or deceit in obtaining or renewing a certificate ~~or in obtaining a~~ and license to practice as a certified public accountant or licensed public accountant under ~~this act~~ the provisions of this chapter.

(~~3~~c) Dishonesty, fraud or gross negligence in the practice of ~~certified~~ public accounting or ~~public accountancy~~ in the filing or failure to file his own income tax returns.

(~~4~~d) Violation of ~~a rule of professional conduct or ethics promulgated~~ any provision of this chapter, or any rule adopted by the board under authority granted by this ~~act~~ chapter, or an order of the board directed specifically to the licensee.

(~~5~~e) Conviction of or a guilty plea to a felony under the laws of any state or of the United States.

(~~6~~f) Conviction of any crime involving moral turpitude, an element of which is dishonesty or fraud, under the laws of any state or of the United States.

(~~7~~g) Practicing as a certified public accountant or licensed public accountant during any period in which the license of the person so practicing has been suspended or revoked by the board.

(~~8~~h) Cancellation, revocation, suspension or refusal to renew or grant a certificate or authority to practice as a certified public accountant or licensed public accountant by any other state, for any cause other than failure to pay an annual registration or license fee in such other state.

(~~9~~i) Practicing as a certified public accountant or licensed public accountant under a false or assumed name; provided, however, this subsection shall have no application to practicing as a certified public accountant or licensed public accountant under the name of a ~~partnership or professional corporation~~ practice unit, when such style or name is in ~~uniformity~~ conformity with a type or form approved by the rules ~~and regulations~~ of the board.

(~~10~~j) Habitual use of drugs or intoxicants to such a degree as to render the licensee unreliable and unfit to practice as a certified public accountant or licensed public accountant.

(~~11~~k) Suspension or revocation of the right to practice before any agency of the United States government or of the state of Idaho, for any cause other than failure to pay a registration or similar fee.

(~~12~~1) Having been declared mentally ~~ill~~ incompetent by a court of competent jurisdiction; provided, however, that when a person's license shall have been revoked or suspended for this cause, such license shall be reinstated by the board when said disability is judicially removed.

(~~13~~m) Nonpayment of the annual ~~certification--or~~ license fee required by this ~~act~~ chapter, said nonpayment having continued for a period of ~~ninety~~ thirty (~~9~~30) days after the expiration of the previous ~~certification-or-license ;-however,-any-certificate-or license-suspended-or-revoked-for-nonpayment-of-the-annual-certification-fee-may-be-reinstated-upon-payment-of-all--past--due--fees, the--maximum--payment--for--such--reinstatement--not-to-exceed-the amount-which-would-have-been-payable-for-the--preceding--five--(5) years~~ license.

(~~14~~n) Holding ~~oneself~~ out as qualified or authorized to practice as a certified public accountant or licensed public accountant in this state, or practicing public accountancy without holding a current, valid, unrevoked and unsuspended certificate and~~/or~~ license issued by the board.

(2) The expenses incurred by the board~~,~~ for any or all proceedings ~~instigated~~ initiated against a person for violation of any of the provisions of this ~~act,~~ chapter may be charged against such person by the board, upon the finding of a violation of this ~~act~~ chapter, in addition to any ~~fines~~ administrative penalties which may be levied by the board against such person. ~~Fines~~ Administrative penalties levied by the board shall not exceed one thousand dollars ($1,000) per violation.

(3) In lieu of or in addition to any remedy specifically provided, the board may require of a licensee or a practice unit:

(a) A quality review conducted in such fashion as the board may specify;

(b) Preissuance review;

(c) Satisfactory completion of such continuing professional education programs or examinations as the board may specify; and

(d) Other similar remedies.

(4) In any action brought under the provisions of this chapter, evidence of the commission of a single act prohibited in this chapter shall be sufficient to justify a suspension, revocation, fine, administrative penalty, restriction, reprimand, injunction, restraining order, conviction or any other remedy authorized in this chapter. Evidence of a general course of conduct shall not be required.

SECTION 24. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-220, Idaho Code, and to read as follows:

54-220. USE OF TITLE -- VALID LICENSE TO PRACTICE. (1) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" or any other title, designation, words, letters, abbreviations, sign, card or device to indicate that such person is a certified public accountant or licensed public accountant unless such person holds a license as a certified public

accountant or licensed public accountant pursuant to chapter 2, title 54, Idaho Code.

(2) No person, proprietorship, partnership or corporation not licensed or registered pursuant to this chapter shall assume or use the title or designation "certified accountant," "chartered accountant," "public accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," "accountant," "auditor" or other title, designation or abbreviation likely to be confused with the titles "certified public accountant" or "licensed public accountant." Notwithstanding the provisions of this section, the board may adopt rules authorizing and limiting the use of specific titles and designations granted by recognized professional societies or associations.

(3) No person, proprietorship, partnership or corporation not licensed or registered pursuant to this chapter shall assume or use any title or designation that includes the words "accountant," "auditor" or "accounting" in connection with any other language, including the language of a report, that implies that such person, proprietorship, partnership or corporation is so licensed or registered or has special competence as an accountant or auditor; provided however, that this subsection does not prohibit any officer, partner, member or employee of any organization from affixing his signature to any statement in reference to the financial affairs of such organization with any wording designating the position, title or office that he holds therein nor prohibit any act of a public official or employee in the performance of his duties as such.

SECTION 25. That Section 54-221, Idaho Code, be, and the same is hereby repealed.

SECTION 26. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-221, Idaho Code, and to read as follows:

54-221. ISSUANCE OF A REPORT. (1) Only those practice units registered pursuant to this chapter shall issue a report on the financial statements of any other person, firm, organization or governmental unit. This prohibition does not apply to any officer, partner, employee or member of any organization affixing their signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title or office that they hold therein; nor prohibit any act of a public official or employee in the performance of their duties as such; nor prohibit the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns, management, financial advisory or consulting services, and the preparation of financial statements without the issuance of reports, as defined in section 54-206, Idaho Code.

(2) The prohibition contained in subsection (1) of this section is applicable to issuance, by a person or firm not holding a valid license, of a report using any form of language conventionally used by licensees respecting a review of financial statements or respecting a

compilation of financial statements.

(3) No corporation shall affix its name to a report on the financial statements of any other person, firm, organization or governmental unit unless it is a professional public accounting corporation, as defined in section 54-206, Idaho Code.

(4) No firm of any kind or nature shall affix its name to a report on the financial statements of any other person, firm, organization or governmental unit unless all of its owners, partners, officers, shareholders or members who regularly work in the state of Idaho are themselves persons licensed as certified public accountants or licensed public accountants pursuant to this chapter, and all other partners, officers, shareholders or members are persons licensed as certified public accountants or licensed public accountants in some other state.

SECTION 27. That Section 54-219, Idaho Code, be, and the same is hereby amended to read as follows:

54-2~~1~~922. VIOLATION OF ~~ACT~~ CHAPTER A MISDEMEANOR. Any violation of any of the provisions of this ~~act~~ chapter shall constitute a misdemeanor, and any person, corporation, partnership, proprietorship, member, firm or association of any kind or nature convicted thereof may be punished by a fine not to exceed ~~three~~ seven hundred fifty dollars ($~~300~~750), or ~~by~~ six (6) months ~~in a county jail~~ imprisonment, or both.

SECTION 28. That Section 54-220, Idaho Code, be, and the same is hereby amended to read as follows:

54-22~~0~~3. INJUNCTION. Whenever any person, corporation, partnership, proprietorship, firm or association of any kind or nature violates any of the provisions of this ~~act~~ chapter, the board, without regard to criminal prosecution, may maintain an action in the name of the state of Idaho to enjoin said person, corporation, partnership, proprietorship, firm or association from any further violations, such action to be brought either in the county in which said acts are claimed to have been or are being committed, in the county where the defendant resides, or in Ada County. Upon the filing of a verified complaint in the district court, the court, if satisfied that the acts complained of have been or probably are being or may be committed, may issue an injunction pendente lite without bond, on request of the board, enjoining the defendant from the commission of any such act or acts constituting said violations. A copy of said complaint shall be served upon the defendant, and the proceedings shall thereafter be conducted as in any other similar civil action. If the commission of said act or acts be established, the court shall enter a decree perpetually enjoining said defendant from committing said act or acts. In case of violation of any injunction issued under the provisions of this section, the court, or the judge thereof at chambers, may summarily try and punish the offender for his contempt of court.

SECTION 29. That Section 54-222, Idaho Code, be, and the same is hereby amended to read as follows:

54-22~~2~~4. ~~APPEAL~~ JUDICIAL REVIEW. Any person whose certificate or license shall be revoked or suspended ~~by~~ or who is otherwise aggrieved by any final action of the board taken pursuant to section 54-219, Idaho Code, shall have the right to ~~appeal and a~~ judicial review of such ~~order or proceeding~~ action in accordance with the provisions of the ~~A~~administrative ~~P~~procedure ~~A~~act, chapter 52, title 67, Idaho Code.

SECTION 30. That Section 54-223, Idaho Code, be, and the same is hereby amended to read as follows:

54-22~~3~~5. PROSECUTING ATTORNEY -- ATTORNEY GENERAL. It shall be the duty of the prosecuting attorney in each county to prosecute violations of this ~~act~~ chapter occurring within the county. The attorney general shall act as legal adviser to the board; provided, however, the board may retain private counsel to represent the board.

SECTION 31. That Section 54-224, Idaho Code, be, and the same is hereby repealed.

SECTION 32. That Section 54-203, Idaho Code, be, and the same is hereby repealed.

SECTION 33. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-203, Idaho Code, and to read as follows:

54-203. BOARD CREATED -- MEMBERSHIP -- APPOINTMENT -- VACANCIES. There is hereby created in the department of self-governing agencies a board of accountancy in and for the state of Idaho, to be known as the Idaho state board of accountancy. The board shall consist of seven (7) members appointed by the governor, five (5) of whom shall hold current certified public accountant licenses issued under the laws of this state, one (1) who shall be either a licensed public accountant or certified public accountant and one (1) who shall be a public member not engaged in the practice of public accounting. Board members shall be appointed for terms of five (5) years to commence on the first day of September. The existing members of the Idaho state board of accountancy as previously appointed, shall continue in office with their terms expiring on August 31 of each member's final year. A person who is either a licensed public accountant or certified public accountant shall fill a sixth position on the board whose first term shall be for four (4) years beginning September 1, 1993. One (1) public member from the business community shall serve as the seventh member of the board whose first term shall be for four (4) years beginning September 1, 1993. Whenever the term for a member of the board holding one (1) of the original five (5) seats on the board expires or the position is vacant for any cause, the Idaho society of certified public accountants shall nominate two (2) persons with qualifications to become a member of the board as herein specified, for each such vacancy. Whenever the term for a member holding the sixth position on the board shall expire or be vacant for any cause, the Idaho association of public accountants shall nominate two (2) persons with qualifications to

become a member of the board as herein specified, for each such vacancy. Nominations shall be forwarded to the governor who shall appoint from such nominees the requisite number of persons to be members of the board to fill such vacancy or vacancies. Whenever the term for a member holding the seventh position on the board shall expire or be vacant for any cause, the governor shall appoint a nonlicensed person to become a member of the board without receiving official nominees from any source. Vacancies occurring during the term shall be filled by appointment by the governor for the unexpired term. Upon expiration of the term of office, a member shall continue to serve until a successor shall have been appointed and shall have qualified.

SECTION 34. That Chapter 2, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-226, Idaho Code, and to read as follows:

54-226. INAPPLICABILITY OF CHAPTER. (1) This chapter shall not be construed to prevent any person from rendering tax services, management advisory or consulting services, or from preparing financial statements without the expression of an opinion or an assurance.

(2) This chapter shall not be construed to prevent any person from stating that he has prepared, assembled or drafted a financial statement, provided he does not use any additional language which comprises an assurance.

(3) The prohibitions of section 54-221, Idaho Code, and the other provisions of this chapter shall not be construed to preclude the use of the following language by any person: "I (We) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

SECTION 35. Section 17 of this act shall not become effective until one (1) year after the legislature has reviewed and approved the rules of the Idaho State Board of Accountancy for the implementation of Section 54-214, Idaho Code.

Approved March 27, 1993.

CHAPTER 240
(H.B. No. 71)

AN ACT

RELATING TO LICENSES TO RETAIL LIQUORS; AMENDING SECTION 23-903, IDAHO CODE, TO REMOVE A RETAIL LIQUOR LICENSEE'S ABILITY TO OBTAIN REISSUANCE OF A RETAIL LIQUOR LICENSE WITHIN TWO YEARS FOLLOWING THE EXPIRATION OF SAID LICENSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-903, Idaho Code, be, and the same is hereby amended to read as follows:

23-903. LICENSE TO RETAIL LIQUOR. The director of the department of law enforcement is hereby empowered, authorized, and directed to issue licenses to qualified applicants, as herein provided, whereby the licensee shall be authorized and permitted to sell liquor by the drink at retail and, upon the issuance of such license, the licensee therein named shall be authorized to sell liquor at retail by the drink, but only in accordance with the rules and regulations promulgated by the director and the provisions of this chapter. No license shall be issued for the sale of liquor on any premises outside the incorporated limits of any city except as provided in this chapter and the number of licenses so issued for any city shall not exceed one (1) license for each one thousand five hundred (1,500) of population of said city or fraction thereof, as established in the last preceding census, or any subsequent special census conducted by the United States bureau of the census or by an estimate that is statistically valid including adding the number of new residential utility connections or including adding the population of areas annexed into the city after the last census or special census was conducted, except that upon proper application thereof not more than two (2) licenses may be issued for each incorporated city with a population of one thousand five hundred (1,500) or less, unless the retail licensing of liquor by the drink has been previously disapproved under the provisions of sections 23-917, 23-918, 23-919, 23-920 and 23-921, Idaho Code; provided, however, that any license heretofore issued may be renewed from year to year without regard to the population or status of the city for which such license is issued. Any license issued and which has remained in effect at its location for a consecutive period of ten (10) years or more shall be deemed to have been validly issued and may be renewed from year to year ~~or may be reissued for such location within two (2) years following the expiration date of its last previous renewed license;~~ provided, however, that the applicant for the renewal ~~or reissue~~ of such license is not otherwise disqualified for licensure pursuant to section 23-910, Idaho Code, and, if the premises required special characteristics for original licensure, other than being either within or without the incorporated limits of a city, that said premises continue to have such special characteristics at the time of the application for renewal ~~or reissue~~. Nothing herein contained shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide golf course whether located within or without the limits of any city, or ski resort, or to the lessee of any premises situate thereon, no part of which ski resort or the premises thereon is situate within the incorporated limits of any city. For the purpose of this section a golf course shall comprise an actual, bona fide golf course, which is regularly used for the playing of the game of golf, and having not less than nine (9) tees, fairways and greens laid out and used in the usual and regular manner of a golf course. Nine (9) hole courses must have a total yardage of at least one thousand (1,000) yards, and eighteen (18) hole courses must have a

total yardage of at least two thousand (2,000) yards as measured by totaling the tee-to-green distance of all holes. The course must be planted in grass except that it may provide artificial tee mats. Where any such golf course is owned or leased by an association of members and is used or enjoyed by such members, or their guests, none of the disqualifications contained in section 23-910, Idaho Code, shall apply to such association as a licensee where such disqualifications, or any of them, would apply only to a member of such association where such member has no interest therein except as a member thereof. Also for the purpose of this section a ski resort shall comprise real property of not less than ten (10) acres in size, exclusive of the terrain used for skiing and upon which the owner, operator, or lessee of the ski resort has made available himself, or through others, including but not limited to the owners of condominiums, permanent bona fide overnight accommodations available to the general public for one hundred (100) persons or more, and which real property is contiguous to or located within the area in which skiing occurs, and which real property is regularly operated as a ski resort in the winter time, and where the owner, operator, or lessee of the ski resort is also the owner, operator, or lessee of the area served by a bona fide chair ski lift facility or facilities. The fees for licenses granted to ski resorts shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Not more than one (1) licensed premises shall be permitted on any golf course or any ski resort or within the area comprising the same.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator or lessee of an actual, bona fide equestrian facility located on not less than forty (40) contiguous acres, with permanently erected seating of not less than six thousand (6,000) seats, no part of which equestrian facility or the premises thereon is situate within the incorporated limits of any city, and which facility shall have at least three (3) days per year of a professionally sanctioned rodeo. Not more than one (1) licensed premises shall be permitted at any equestrian facility or within an area comprising such a facility. The license shall be solely for the equestrian facility and shall not be transferred to any other location. The fees for licenses granted to equestrian facilities shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator, or lessee of a restaurant operated on an airport owned or operated by a county or municipal corporation or on an airport owned or operated jointly by a county and municipal corporation, and which said airport is served by a trunk or local service air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board of the United States of America. Not more than one (1) license shall be issued on any airport.

Nothing herein contained shall prohibit the issuance of one (1) club license to a club as defined in section 23-902, Idaho Code. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased or occupied by the club, and only to bona fide members of the club, and to serve and to sell alcoholic beverages for consumption to bona fide members' guests. A club license issued pursuant to

the provisions of this section is not transferable and may not be sold. Any club license issued pursuant to the provisions of this section will revert to the director when, in his judgment, the licensee ceases to operate as a bona fide club as defined in section 23-902, Idaho Code. No club may hold a liquor license and a club license simultaneously. A club which on July 1, 1983, holds a liquor license, may continue to possess that license. Any club which possesses a liquor license on January 1, 1983, or thereafter, and then sells that liquor license, may not obtain a club license, and the director shall not issue a club license to that club for a period of five (5) years following such sale. The fee for any license issued to a qualifying club within an incorporated municipality shall be as prescribed in subsections (a), (b) and (c) of section 23-904, Idaho Code. The fee for any license issued to a qualifying club not situate within an incorporated municipality shall be as specified for golf courses under section 23-904(f), Idaho Code. The provisions of section 23-916, Idaho Code, regarding county and city licenses, shall pertain to club licenses. The burden of producing sufficient documentation of qualifications for club licensure shall be with the club applicant.

Nothing in this chapter to the contrary shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide convention center which is within the incorporated limits of a city having a population of three thousand (3,000) or greater, and which city does not have located therein a convention center with a valid convention center license to sell liquor by the drink. For the purpose of this section, a convention center means a facility having at least thirty-five thousand (35,000) square feet of floor space or a facility having at least one hundred twenty (120) sleeping rooms and an adjoining meeting room which will accommodate not less than three hundred fifty (350) persons, whether or not such room may be partitioned into smaller rooms, and provided that such meeting room shall contain at least three thousand (3,000) square feet of floor space. Such license must be placed in actual use in said convention center within one (1) year from the date of its issuance. The fee for any license issued to a qualifying convention center shall be as prescribed in subsection (c) of section 23-904, Idaho Code. No license issued to a convention center hereunder shall be transferable to another location or facility, nor shall the holder of a convention center license be eligible for the issuance of a license in the same city pursuant to any other provision of this chapter. For purposes of this section, the term holder shall include an owner, operator or lessee and shall include a stockholder, director, or officer of a corporation, or a partner in a partnership, which corporation or partnership has been issued a convention center license pursuant to this chapter. Not more than one (1) licensed premises shall be permitted on any convention center or within the area comprising the same, including convention centers that also comprise golf courses or ski resorts as herein defined.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, beverage and/or lodging facility that has been in continuous operation in the same location for at least seventy-five (75) years, except for temporary closings for refurbishing or reconstruction. The provisions of section 23-910,

Idaho Code, shall apply to licenses issued to continuous operation facilities. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued to continuous operation facilities are not transferable.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of the lodging, dining and entertainment facilities owned by a gondola resort complex and operated in conjunction with the other public services provided by a gondola resort complex located within the ownership/leasehold boundaries of a gondola resort complex.

A gondola resort complex means an actual, bona fide gondola capable of transporting people for recreational and/or entertainment purposes at least three (3) miles in length with a vertical rise of three thousand (3,000) feet, portions of which may be located within or over the limits of one (1) or more cities.

The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this subsection. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued under the provisions of this subsection are not transferable.

Approved March 27, 1993.

CHAPTER 241
(H.B. No. 423)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT AS TO MATCHING FUNDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. It is legislative intent that the expenditures for the Department of Law Enforcement not exceed the following amounts for the period July 1, 1993, through June 30, 1994:

FROM:

General Fund	$10,749,300
Idaho Law Enforcement Fund	11,814,700
Idaho Law Enforcement Telecommunications Fund	394,500
Drug Donation Fund	215,200
Federal Grant Fund	4,715,400
Hazardous Materials/Waste Enforcement Fund	268,300
Idaho State Racing Commission Fund	612,700
Parimutuel Distributions Fund	375,000
Indirect Cost Recovery Fund	52,100
State Brand Board Fund	1,933,800
Miscellaneous Revenue Fund	392,900
Peace Officers Fund	998,600
TOTAL	$32,522,500

SECTION 2. There is hereby appropriated to the Department of Law Enforcement the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. CENTRAL ADMINISTRATION:					
FROM:					
General Fund	$ 1,247,800	$ 447,300	$ 164,000		$ 1,859,100
Idaho Law Enforcement Fund		34,200	55,800		90,000
Peace Officers Fund		31,600	79,300		110,900
State Brand Board Fund		1,400	1,300		2,700
Hazardous Materials/ Waste Enforcement Fund		800			800
Idaho State Racing Commission Fund		1,500	1,400		2,900
Idaho Law Enforcement Telecommunications Fund		8,700			8,700
Federal Grant Fund		16,800	4,700		21,500
Indirect Cost Recovery Fund	46,100	6,000			52,100
TOTAL	$ 1,293,900	$ 548,300	$ 306,500		$ 2,148,700
II. POLICE SERVICES:					
FROM:					
General Fund	$ 4,389,200	$2,158,400	$ 8,500		$ 6,556,100
Idaho Law Enforcement Telecommunications Fund	125,700	260,100			385,800
Drug Donation Fund		215,200			215,200
Federal Grant Fund	741,100	518,900		$1,720,000	2,980,000
Miscellaneous Revenue Fund	66,400	312,800			379,200
TOTAL	$ 5,322,400	$3,465,400	$ 8,500	$1,720,000	$10,516,300
III. IDAHO STATE POLICE:					
FROM:					
General Fund	$ 1,548,600	$ 28,500			$ 1,577,100
Idaho Law Enforcement Fund	8,053,400	2,265,300	$1,406,000		11,724,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Hazardous Materials/ Waste Enforcement Fund	147,400	60,100		$ 60,000	267,500
Federal Grant Fund	1,228,700	485,200			1,713,900
TOTAL	$10,978,100	$2,839,100	$1,406,000	$ 60,000	$15,283,200
IV. BRAND INSPECTION:					
FROM:					
State Brand Board Fund	$ 1,588,800	$ 253,300	$ 89,000		$ 1,931,100
V. RACING COMMISSION:					
FROM:					
Idaho State Racing Commission Fund	$ 288,900	$ 300,900	$ 20,000		$ 609,800
Parimutuel Distributions Fund				$ 375,000	375,000
TOTAL	$ 288,900	$ 300,900	$ 20,000	$ 375,000	$ 984,800
VI. ALCOHOL BEVERAGE CONTROL:					
FROM:					
General Fund	$ 618,500	$ 138,500			$ 757,000
Miscellaneous Revenue Fund		1,000			1,000
TOTAL	$ 618,500	$ 139,500			$ 758,000
VII. POST ACADEMY:					
FROM:					
Peace Officers Fund	$ 377,100	$ 409,200	$ 34,500	$ 66,900	$ 887,700
Miscellaneous Revenue Fund		4,900	7,800		12,700
TOTAL	$ 377,100	$ 414,100	$ 42,300	$ 66,900	$ 900,400
GRAND TOTAL	$20,467,700	$7,960,600	$1,872,300	$2,221,900	$32,522,500

SECTION 3. It is legislative intent that any new drug related funds may be used as a match for federal anti-drug abuse grant moneys.

Approved March 27, 1993.

CHAPTER 242
(H.B. No. 426)

AN ACT

PROVIDING FOR THE TRANSFER OF MONEYS FROM THE BUDGET RESERVE ACCOUNT TO THE GENERAL FUND; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. If the unexpended, unencumbered balance in the General Fund as of June 30, 1993, is negative, the State Board of Examiners is hereby directed to transfer the amount of the negative balance, or $11,566,500, whichever is less, from the Budget Reserve Account to the General Fund.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 27, 1993.

CHAPTER 243
(H.B. No. 427)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON WOMEN'S PROGRAMS FOR FISCAL YEAR 1994; AND EXPRESSING LEGISLATIVE INTENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission on Women's Programs the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$18,000	$12,400	$30,400
Miscellaneous Revenue Fund		6,500	6,500
TOTAL	$18,000	$18,900	$36,900

SECTION 2. It is legislative intent that the Commission on Women's Programs take action to make reprinting of the "Women and Laws in Idaho" booklet self-funding by charging actual costs.

Approved March 27, 1993.

CHAPTER 244
(H.B. No. 428)

AN ACT
APPROPRIATING MONEYS FOR THE MILITARY DIVISION FOR FISCAL YEAR 1994.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Gov-

ernor for the Military Division, the following amounts to be expended for the listed programs from the listed funds for the period July 1, 1993, through June 30, 1994:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. MILITARY MANAGEMENT:					
FROM:					
General Fund	$ 937,900	$ 314,200		$250,700	$1,502,800
Federal Grant Fund	66,400	163,200			229,600
Miscellaneous Revenue Fund	15,000	20,600			35,600
TOTAL	$1,019,300	$ 498,000		$250,700	$1,768,000
B. FEDERAL AND STATE CONTRACTS:					
FROM:					
General Fund	$ 190,400	$ 169,400			$ 359,800
Federal Grant Fund	3,678,800	2,364,300			6,043,100
TOTAL	$3,869,200	$2,533,700			$6,402,900
C. DISASTER SERVICES:					
FROM:					
General Fund	$ 268,200	$ 46,500			$ 314,700
Federal Grant Fund	558,000	233,100	$31,800	$400,000	1,222,900
Indirect Cost Recovery Fund	92,100	8,100			100,200
TOTAL	$ 918,300	$ 287,700	$31,800	$400,000	$1,637,800
GRAND TOTAL	$5,806,800	$3,319,400	$31,800	$650,700	$9,808,700

Approved March 27, 1993.

CHAPTER 245
(H.B. No. 324)

AN ACT

RELATING TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5203, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 263, LAWS OF 1992, TO PROVIDE FOR NOT LESS FREQUENTLY THAN MONTHLY PUBLICATION OF THE ADMINISTRATIVE BULLETIN; AMENDING SECTION 67-5205, IDAHO CODE, AS ADDED BY SECTION 6, CHAPTER 263, LAWS OF 1992, TO PROVIDE FOR PAYMENT AND ALLOCATION OF COSTS FOR PRODUCTION OF RULES, TO PROVIDE ELECTRONIC ACCESS AND NEWSPAPER PUBLICATION; AMENDING SEC-

TION 67-5221, IDAHO CODE, AS AMENDED AND REDESIGNATED BY SECTION 10, CHAPTER 263, LAWS OF 1992, TO PROVIDE FOR CHANGES RELATING TO NEWSPAPER PUBLISHING OF NOTICE OF PROPOSED RULEMAKING; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5203, Idaho Code, as added by Section 3, Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5203. PUBLICATION OF ADMINISTRATIVE BULLETIN. (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published in the bulletin. The bulletin shall be published by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

(a) all proclamations and executive orders of the governor, except those that have no general applicability or are effective only against state agencies or persons in their capacity as officers, agents, or employees thereof;

(b) agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and final rules, together with any explanatory material supplied by the agency;

(c) all agency documents required by law to be published in the bulletin; and

(d) any legislative documents affecting a final agency rule.

(5) The text of all documents published in the bulletin shall be the official text of that document until the document has been published in the administrative code.

(6) The coordinator shall provide a process for access to the contents of the bulletin and to the administrative code by electronic means.

(7) The coordinator shall provide a toll free telephone line for informational purposes.

SECTION 2. That Section 67-5205, Idaho Code, as added by Section 6, Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS. (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual printed pamphlet copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or state-

ment of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, for reprints and bound volumes thereof and for pamphlet rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of copies which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free copies shall be distributed by the coordinator, as follows:

(a) One (1) to each county clerk for the use of the county law library.

(b) One (1) each to the senate and the house of representatives.

(c) One (1) to the attorney general.

(d) One (1) to the legislative council.

(e) One (1) each to the state universities and colleges, and one (1) to each community college.

(f) One (1) to the state law library.

(g) One (1) to the state library.

(h) One (1) each to any public library in this state which requests a copy from the coordinator.

(i) One (1) each to any city in this state which requests a copy from the coordinator.

In addition to those free copies required to be distributed by this section, the coordinator may distribute free copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code account. All moneys received from the <u>production of rules, the</u> sale of the administrative code, the permanent supplements thereto, or the <u>bulletin, and for providing electronic access,</u> shall be deposited in the account. All agencies which have any material published in the bulletin, administrative code or supplements thereto, <u>or newspapers,</u> are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of publication and distribution of such material. All moneys placed in the account are perpetually appropriated to the coordinator for the administration of the provisions of this chapter, and for the publica-

tion and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall allocate costs of production, publication and distribution to each participating agency in the same proportion that the amount of the costs of production, publication and distribution for that agency bears to the total costs of production, publication and distribution for all agencies, with the costs to be determined on a per page basis. A cost per page may be imposed even though less than a full page of publication is required.

The cost allocations to each participating agency shall be made monthly by the coordinator, and each participating agency shall promptly pay into the administrative code account such costs.

SECTION 3. That Section 67-5221, Idaho Code, as amended and redesignated by Section 10, Chapter 263, Laws of 1992, be, and the same is hereby amended to read as follows:

67-5221. PUBLIC NOTICE OF PROPOSED RULEMAKING. (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

(a) the specific statutory authority for the rulemaking;

(b) a statement in nontechnical language of the substance of the proposed rule;

(c) ~~a concise, nontechnical explanation of the purpose of the proposed rule;~~

~~(d)~~ the text of the proposed rule prepared in legislative format;

(~~e~~d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

(~~f~~e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

(~~g~~f) the manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code; and

(~~h~~g) the deadline for public comments on the proposed rule.

(2) (a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The form ~~and content~~ of the notice shall be substantially as follows: ~~no~~ typefaces used shall measure greater than seven (7) points, but less than twelve (12) points, and space width shall not be less than two (2) newspaper columns. The content of the notice shall be substantially as follows:

PUBLIC NOTICE
OF INTENT TO PROPOSE OR PROMULGATE NEW
OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text ~~of~~ and all related, pertinent information concerning their intent to change or make the following rules in the new issue

of the state administrative bulletin:

Agency Name and Address Rule Number Rule Subject Matter Comment Deadline ~~Comment-Address~~ ~~Hearing-Location~~

Citizens of (county name) can view all issues of the administrative bulletin in the ~~following-locations-in-this~~ county law libraries.

~~Location-1~~ ~~Location-2~~ ~~Location-3~~ ~~Location-4~~

(b) the coordinator shall cause the notice required in paragraph (a) of this subsection to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published. The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing these notices which will provide adequate exposure to the notices by the least expensive means.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 27, 1993.

CHAPTER 246
(H.B. No. 97)

AN ACT

RELATING TO THE SOLICITATION OF CHARITABLE DONATIONS; AMENDING TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 12, TITLE 48, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE FINDINGS AND INTENT, TO PROVIDE DEFINITIONS, TO PROVIDE DECLARATION OF UNLAWFUL ACTS, TO PROVIDE FOR THE AUTHORITY OF THE ATTORNEY GENERAL AND DISTRICT COURTS, TO PROVIDE FOR PRIVATE CAUSES OF ACTION AND REMEDIES; AND TO PROVIDE FOR A LIMITATION OF ACTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 12, Title 48, Idaho Code, and to read as follows:

CHAPTER 12
IDAHO CHARITABLE SOLICITATION ACT

48-1201. LEGISLATIVE FINDINGS AND INTENT. (1) The incidents of deceptive collection of funds in the name of charities are increasing in Idaho. Many generous Idahoans and legitimate charities suffer

financial losses because of misrepresentations and failures to disclose material facts by those who falsely claim to represent a charitable organization or purpose.

(2) It is the intent of the legislature to safeguard the public against deceit and financial hardship, to ensure, foster, and encourage truthful solicitation and prohibit representations that have the capacity, tendency, or effect of misleading a contributor or harming the reputation of charitable organizations that do not make such representations. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish the above-stated purposes.

(3) This chapter shall be known and may be cited as the "Idaho Charitable Solicitation Act."

48-1202. DEFINITIONS. In this chapter:

(1) "Charitable organization" means:

(a) Any person determined by the Internal Revenue Service to be tax exempt pursuant to section 501(c)(3) of the Internal Revenue Code; or

(b) Any person who is or who holds himself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, civic, veteran or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner engages in a charitable solicitation.

(2) "Charitable purpose" means:

(a) Any purpose described in Internal Revenue Code section 501(c)(3); or

(b) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, civic, veteran, or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety.

(3) "Charitable solicitation" means any oral or written request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such money, credit, property, financial assistance or other thing of value or any portion thereof, will be used for a charitable purpose or benefit a charitable organization. No contribution need be made in order for a charitable solicitation to be deemed to have taken place.

(4) "Contribution" means the grant, promise or pledge of money, credit, property, financial assistance or other thing of value in response to a charitable solicitation.

(5) "Damages" mean a loss, detriment or injury, whether to person, property, reputation or rights through any act or practice declared unlawful under the provisions of this chapter.

(6) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

48-1203. UNLAWFUL ACTS. (1) It is unlawful for any person, except a religious corporation, a religious association, a religious educational institution or a religious society, in the planning, conduct or execution of any charitable solicitation, to utilize any unfair, false, deceptive, misleading or unconscionable act or practice. In deciding whether an act or practice is unfair, false, deceptive, misleading or unconscionable within the meaning of this subsection, definitions, standards and interpretations relating thereto under the Idaho consumer protection act and regulations promulgated thereunder shall apply.

(2) It is unlawful for a religious corporation, a religious association, a religious educational institution or a religious society, in the planning, conduct or execution of any charitable solicitation, knowingly and willfully to utilize any false, deceptive or misleading act or practice.

48-1204. AUTHORITY OF THE ATTORNEY GENERAL AND DISTRICT COURT. (1) The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district courts under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) All penalties, costs, and fees received or recovered by the attorney general shall be remitted to the consumer protection account and expended pursuant to subsection (5) of section 48-606, Idaho Code.

48-1205. PRIVATE CAUSES OF ACTION AND REMEDIES. (1) Any person who, pursuant to a charitable solicitation, suffers damages as a result of any act, conduct, or practice declared unlawful under the provisions of this chapter, shall have the same rights and remedies in seeking and obtaining redress under the provisions of this chapter as those granted under the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(2) The remedies provided for in this chapter are not exclusive, and shall be in addition to any other procedures or remedies for any violation or conduct provided for in other law.

48-1206. LIMITATION OF ACTION. (1) No private action may be brought under the provisions of this chapter more than two (2) years after the cause of action accrues.

(2) A cause of action shall be deemed to have accrued when the party bringing an action under the provisions of this chapter knows or in the exercise of reasonable care should have known about the violation of the provisions of this chapter.

Approved March 29, 1993.

CHAPTER 247
(H.B. No. 278, As Amended)

AN ACT
RELATING TO NOXIOUS WEEDS; AMENDING SECTION 22-2470, IDAHO CODE, TO

REDESIGNATE THE SECTION; AMENDING SECTION 22-2472, IDAHO CODE, TO REDESIGNATE THE SECTION, EXPAND DEFINITIONS AND PROVIDE NEW DEFINITIONS; AMENDING SECTION 22-2473, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO VEST ENFORCEMENT AUTHORITY OF THE CHAPTER IN THE DIRECTOR OF AGRICULTURE, TO ESTABLISH STATE DUTIES REGARDING THE CONTROL OF NOXIOUS WEEDS; AMENDING CHAPTER 24, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2404, IDAHO CODE, TO ESTABLISH STATE POWERS REGARDING THE CONTROL OF NOXIOUS WEEDS; REPEALING SECTIONS 22-2487 AND 22-2476, IDAHO CODE; AMENDING SECTION 22-2474, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ESTABLISH COUNTY DUTIES REGARDING THE CONTROL OF NOXIOUS WEEDS; REPEALING SECTION 22-2475, IDAHO CODE; AMENDING SECTION 22-2482, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ESTABLISH COUNTY POWERS REGARDING THE CONTROL OF NOXIOUS WEEDS; REPEALING SECTION 22-2483, IDAHO CODE; AMENDING SECTION 22-2471, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ESTABLISH LANDOWNER AND CITIZEN DUTIES REGARDING THE CONTROL OF NOXIOUS WEEDS; AMENDING SECTION 22-2481, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ESTABLISH LANDOWNER AND CITIZEN POWERS REGARDING THE CONTROL OF NOXIOUS WEEDS; AMENDING SECTION 22-2488, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE PENALTIES; AMENDING SECTION 22-2484, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR WEED CONTROL ADVISORY COMMITTEES; REPEALING SECTIONS 22-2477, 22-2478, 22-2479, 22-2480, 22-2485 AND 22-2486, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-2470, Idaho Code be, and the same is hereby amended to read as follows:

22-247~~0~~01. DECLARATION OF POLICY. It is the purpose of this chapter to define noxious weeds; legal requirements, duties, and responsibilities of persons; and to provide the statutory and financial means for the control of noxious weeds, wherever such noxious weeds occur in this state.

SECTION 2. That Section 22-2472, Idaho Code, be, and the same is hereby amended to read as follows:

22-247~~2~~02. DEFINITIONS. As used in this chapter:
(1) "Agency" means:
(a) In the case of the federal government, any authority which exercises administrative control over defined areas of federal ~~property~~ lands within the state of Idaho;
(b) In the case of the state of Idaho, any department, board, commission, or institution~~.~~;
(c) In the case of local government, cities, counties and any legal subdivisions thereof, drainage districts, irrigation districts, canal companies, highway districts, or any special taxing district.
(2) "Applicable fund or account" means:
(a) In the case of the state of Idaho, the noxious weed account, which is hereby created and established in the dedicated fund and

which shall be used exclusively for the purposes prescribed by this chapter;

(b) In each county, the noxious weed fund, which is hereby created and established and shall be maintained in each county and which shall be used exclusively for the purposes prescribed by this chapter.

(3) "Containment" means ~~prevention of seed productions, seed dissemination and production of new plant shoots by vegetative means~~ halting the spread of a weed infestation beyond specified boundaries.

(4) "Control authority" means:

(a) On the state level, the director of the department of agriculture;

(b) On the county level, the board of county commissioners.

(5) "Director" means the director of the department of agriculture or ~~his~~ the director's designated agent.

(6) "Eradication" means the complete~~ly~~ ~~eliminating~~ elimination of all above-ground plant growth of a target noxious weed species for a ~~time~~ period ~~longer than the expected longevity of the species~~ of two (2) years.

(7) "Land" means all soil or water or other growing medium.

(8) "Landowner" means:

(a) The person who holds legal title to the land, except that portion for which another person has the right to exclude others from possession of the parcel;

(b) A person with an interest in a parcel of land such that the person has the right to exclude others from possession of the parcel.

(9) "Noxious weed" means ~~kind of species of~~ any plant having the potential to cause injury to public health, crops, livestock, land or other property; and which is designated as noxious by the director.

(9~~1~~0) "Person" means any individual, partnership, firm, agency, corporation, company, society~~,~~ or association~~, drainage district, irrigation district, highway district or any taxing district~~.

(10~~1~~) "Prevention" means ~~avoiding~~ any action that reduces the potential for the introduction or establishment of a plant species in areas not currently infested with that species.

(11~~2~~) "Quarantine" means the regulation of the production, movement, or existence of plants, plant products, animals, animal products, or any other article or material, or the normal activity of persons, to prevent or limit introduction or spread of ~~a~~ noxious weeds.

(13) "Restoration" means the process of reconditioning formerly weed infested land to a productive or desirable condition.

(12~~4~~) "Special management zone" is an area wherein specific requirements of this chapter may be modified.

(13~~5~~) "Weed control" means any or all of the following: prevention, restoration, eradication, or ~~containment~~ modified treatments specified in a special management zone.

SECTION 3. That Section 22-2473, Idaho Code, be, and the same is hereby amended to read as follows:

22-247~~3~~03. ENFORCEMENT OF CHAPTER VESTED IN DIRECTOR -- ~~POWERS AND~~ STATE DUTIES. (1) The ~~duties~~ duty of enforcing this chapter and

carrying out its provisions is vested in the director~~, and the control authorities designated in this chapter acting under the supervision and direction of the director.~~

(2) The director shall:

(a) determine what weeds are noxious for the purposes of this chapter~~,~~; and ~~shall~~

(b) compile and keep current a list of such noxious weeds or group of noxious weeds, which list shall be published and incorporated in the rules and regulations of the director~~.~~; and

(c) ~~The director shall,~~ make and publish such rules and regulations as in ~~his~~ the director's judgment are necessary to carry out the provisions of this chapter; and

(d) employ a statewide weed coordinator to carry out ~~his~~ the director's duties and responsibilities; and

(e) publish a list of items capable of disseminating noxious weeds, and designate treatment of such articles as in the director's opinion would prevent such dissemination; and

(f) consult with affected county control authorities before establishing a special management zone.

~~(2) The director is authorized to investigate the subject of noxious weeds; to require information, annual work plans, and reports from each county and from each state agency as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof; to cooperate with agencies and persons in carrying out his duties under this chapter, and to conduct matters outside this state in the interest of state noxious weed control; to advise and confer as to the extent of noxious weed infestations and the methods of control; to call and attend meetings and conferences dealing with the subject of noxious weeds; to disseminate information and conduct educational campaigns in cooperation with the University of Idaho's extension service and others with respect to the control of noxious weeds; to procure materials and equipment; to inspect and certify Idaho crops and imports and exports to verify freedom from noxious weeds, and may authorize county weed superintendents and others to perform such inspections and certification; and to perform such other acts as may be necessary or appropriate to the administration of the provisions of this chapter.~~

~~(3) If at any time the director determines that the county commissioners have failed to cooperate or carry out their duties and responsibilities as a control authority, the director shall notify them of the deficiency, and suggest corrective action. If the situation is not satisfactorily corrected within seven (7) days after the time outlined in the director's corrective action plan, the director shall initiate appropriate action and charge to the county all expenses including the hiring of necessary labor and equipment. Quarantine of specific crops or potential weed propagating activities may be a part of the control program.~~

SECTION 4. That Chapter 24, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-2404, Idaho Code, and to be read as follows:

22-2404. STATE POWERS. (1) The director is authorized to:
(a) Investigate the subject of noxious weeds; and
(b) Require information, annual work plans and reports from each county and from each state agency as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof; and
(c) To cooperate with agencies and persons in carrying out the director's duties under this chapter, and to conduct matters outside this state in the interest of state noxious weed control; and
(d) Advise and confer as to the extent of noxious weed infestations and the methods of control; and
(e) Establish minimum requirements and proficiency training of county weed superintendents; and
(f) Call and attend meetings and conferences dealing with the subject of noxious weeds; and
(g) Disseminate information and conduct educational campaigns independently or in cooperation with others; and
(h) Procure materials and equipment; and
(i) Inspect and certify Idaho crops and imports and exports to verify freedom from noxious weeds, and authorize others to conduct such inspections and certification; and
(j) Enter on any public or private land at reasonable times for the purpose of carrying out the provisions of this chapter; and
(k) Apply to any court of competent jurisdiction for a search warrant authorizing access to any land where access was denied and sought for the purposes set forth in this chapter. The court may, upon such application, issue the search warrant for the purposes requested; and
(l) Perform such other acts as may be necessary or appropriate to the administration of the provisions of this chapter; and
(m) Cooperate with the federal government or any established agency thereof in any program of noxious weed control which shall be deemed advisable for the welfare of the people of the state of Idaho, accept any advisable program and make any necessary regulations which are not in contradiction to the purposes of this chapter; and
(n) Accept any funds or grants in aid from the federal government for noxious weed control purposes and account for such moneys as prescribed by the state auditor, and all such federal funds are hereby appropriated to the purpose for which they are received; and
(o) Initiate agreements with federal agencies in accordance with applicable federal laws; and
(p) Control noxious weeds on federal land within the state, with or without reimbursement, and with the consent of the federal agency involved; and
(q) Take any appropriate action necessary to control or quarantine noxious weed infestations whenever an actual or potential emergency situation exists concerning noxious weed infestations anywhere in the state; and
(r) Permit modification of specific noxious weed control requirements in certain areas, after consulting with the county control authority and designating the area as a special management zone;

and

(s) Temporarily designate a weed as noxious for up to fifteen (15) months, after publication in a newspaper of general circulation serving the area of infestation; and

(t) Authorize the issuance of deficiency warrants for the purposes of defraying excess costs for the control of noxious weeds for emergency situations, in the event the actual cost for the control of noxious weeds in any one (1) year exceeds the appropriations made for that purpose. When so authorized the state auditor shall draw deficiency warrants against the general account.

(2) If at any time the director determines that the county commissioners have failed to cooperate or carry out their duties and responsibilities as a control authority, the director shall notify them of the deficiency, and suggest corrective action. If the situation is not satisfactorily corrected within seven (7) days after the time outlined in the director's corrective action plan, the director shall initiate appropriate action and charge to the county all expenses including the hiring of necessary labor and equipment. Quarantine of specific crops or potential noxious weed propagating activities may be a part of the control program.

SECTION 5. That Sections 22-2487 and 22-2476, Idaho Code, be, and the same are hereby repealed.

SECTION 6. That Section 22-2474, Idaho Code, be, and the same is hereby amended to read as follows:

22-247~~4~~05. COUNTY ~~POWERS AND~~ DUTIES. (1) The county ~~commissioners~~ control authority shall:

(a) ~~C~~carry out the duties and responsibilities vested in the county under this chapter and rules and regulations prescribed by the director; and

(b) ~~E~~establish and maintain a coordinated program for control of noxious weeds in the county; employ a county weed superintendent, who may be a superintendent for more than one (1) county and who shall be qualified to detect and treat noxious weeds~~, whose employment shall be for such tenure and at such rates of compensation and reimbursement for travel expenses as prescribed by the county, and without regard to any provisions of law relating to retirement age or dual compensation~~; and

(c) ~~D~~designate one (1) of its members as the liaison between the county weed superintendent and the county commissioners; ~~within sixty (60) days of receipt of a petition by any affected persons, arrange for a public meeting to be held to review the county weed program and allow public comment. County control authorities may designate weeds in addition to the state noxious weed list as noxious within their county, but such additional species are not subject to provisions of the state noxious weed laws~~;

(d) Provide operational and educational funds for the county weed superintendent.

(2) ~~It shall be the duty of every county weed superintendent to examine all land within the county for the purpose of determining whether the provisions of this chapter and rules and regulations of~~

~~the director have been complied with; compile data and submit reports as the director or county may require; consult, advise and provide direction on matters pertaining to the most effective and most practical methods of noxious weed control; investigate or aid in the investigation and prosecution of any violation of this chapter; and cooperate with and assist other county weed superintendents. The county weed superintendent may enter upon all lands within the county where there are noxious weeds to ascertain conditions, if a reasonable attempt has been made to contact the owner prior to entry, and there is probable cause for the entry.~~ A general notice for control of noxious weeds shall be published between March 1 and April 30, in a newspaper of general circulation within the county. The notice shall contain the list of noxious weeds and identify those known to be in the county, and shall stipulate the obligation to control. Failure to publish the notice for control or serve individual notices herein provided does not relieve any person from full compliance with this chapter and regulations thereunder. In all cases said published notice shall be deemed legal and sufficient notice.

(3) Whenever any county finds it necessary to secure more prompt or definite control of noxious weeds than is accomplished by the general notice, it shall cause individual notices on a form prescribed by the director to be served upon the landowner and where possible on the operator of the land giving specific instructions when and how certain named noxious weeds are to be controlled. The individual notice shall also contain information concerning the right to appeal pursuant to section 22-2408, Idaho Code. Individual notices shall be applicable only to the current growing season.

(4) Whenever the landowner of any nonfederal land on which noxious weeds are present has neglected or failed to initiate control as required pursuant to this chapter within five (5) working days from receipt of an individual notice given pursuant to this section, the county having jurisdiction shall have proper control methods used on such land, including necessary destruction of crops, and shall advise the landowner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the landowner. If the costs have not been paid to the control authority within sixty (60) days, the control authority may direct that suit be brought in a court of competent jurisdiction for the unpaid charges. On private lands, if unpaid for sixty (60) days or longer the amount of such expense shall become a lien upon the property; and thereafter the lien shall be subject to collection by the county by sale of the property in the same manner as for delinquent taxes. Nothing contained in this section shall be construed to require satisfaction of the imposed obligation by the sale of property or to bar the application of any other available remedy.

(5) Amounts collected under the provisions of this section shall be deposited to the noxious weed fund of the county and shall be accounted for as prescribed by the county auditor. Disbursements from the noxious weed fund shall be made only for noxious weed control purposes.

(6) The county weed superintendent shall:

(a) Examine all land within the county for the purpose of determining whether the provisions of this chapter and rules and regu-

lations of the director have been complied with; and

(b) Compile data and submit reports as the director or county may require; and

(c) Implement enforcement action as outlined in this chapter; and

(d) Consult, advise and provide direction on matters pertaining to the most effective and most practical methods of noxious weed control; and

(e) Investigate or aid in the investigation and prosecution of any violation of the provisions of this chapter; and

(f) Meet certification requirements as prescribed by the regulations of the director; and

(g) Make recommendations regarding establishment of special management zones.

SECTION 7. That Section 22-2475, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 22-2482, Idaho Code, be, and the same is hereby amended to read as follows:

22-248~~2~~06. ~~SOURCE--OF-FUNDS-OF~~ COUNTY POWERS ~~CONTROL-AUTHORITIES~~. (1) The ~~board-of~~ county ~~commissioners-of-each-county--in--this--state may~~ control authority is authorized to:

(a) Have noxious weeds controlled without cost to the landowner, notwithstanding any other provision of this chapter relating to payment of cost; and

(b) Quarantine any tract of land under its jurisdiction when it appears there is an infestation of noxious weeds beyond the ability of the landowner to control and put into immediate operation the required means for the control or containment of such noxious weeds including necessary destruction of crops; and

(c) Serve individual notice on the landowner and where possible on the operator of the land prior to the entry upon such land declaring a quarantine and specifying the date of the proposed entry and the proposed cost to the violator, and advise the same person of the completion of the control operation and the required reimbursement thereof. If the landowner is not known or readily available, notice shall be deemed satisfied after eight (8) days from postmark of registered mail to the address as shown on the assessment roll of the county; and

(d) Stop movement of noxious weed infested items. Such items shall not be moved from designated premises except in accordance with the written permission of the county control authority; and

(e) Purchase or provide for equipment and materials for the control of noxious weeds, independently or in combination with other control authorities, and use such equipment or materials upon any lands within the state; and

(f) L~~l~~evy annually upon all taxable property of said county a tax for the control of noxious weeds to be collected and apportioned to the county noxious weed fund, which levy shall not exceed six hundredths per cent (.06%) of the market value for assessment purposes of said property in said county, and which levy shall be exempt from the provisions of sections 63-923 and 63-2220, Idaho

Code~~.~~; and

(~~2~~g) ~~The--board--of--county--commissioners-may-u~~Utilize any other methods or local options that may be available ~~to--them~~ for the purpose of funding a coordinated noxious weed control program on the county level~~.~~; and

~~(3)--Any-monies-received-by-the--county--control--authority--under this--chapter-shall-be-apportioned-to-the-county-noxious-weed-fund-and shall-be-accounted-for-as-prescribed-by-the-county-auditor.~~

(h) Use the noxious weed fund, which may be a revolving fund, only for noxious weed purposes. In addition to any appropriated funds designated for the control of noxious weeds, the county control authority shall have the power to receive and disburse funds from any source as a continuing appropriation at any time for the purpose of controlling noxious weeds; and

(i) Propose and accept plans for noxious weed control which may be extended over a period of years by agreement with the landowner. The agreement shall be a contract and the control authority shall have the power and duty to enforce the terms of any such agreement; and

(j) Designate weeds, in addition to the state noxious weed list, as noxious within their county, but such additional species are not subject to provisions of the state noxious weed laws.

(2) The county weed superintendent is authorized to:

(a) Enter upon all lands within the county where there are noxious weeds to ascertain conditions, if a reasonable attempt has been made to contact the landowner and where possible the operator of the land prior to entry and there is probable cause for entry; and

(b) Stipulate items as requiring treatment to prevent dissemination of noxious weeds, in accordance with the applicable regulations.

SECTION 9. That Section 22-2483, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 22-2471, Idaho Code, be, and the same is hereby amended to read as follows:

22-247~~1~~07. ~~DUTY--OF-PERSONS-AND-AGENCIES-TO-CONTROL-NOXIOUS-WEEDS~~ LANDOWNER AND CITIZEN DUTIES. (1) It shall be the duty and responsibility of all ~~persons-and-nonfederal-agencies~~ landowners to control noxious weeds on their land and property ~~that-they-own~~, in accordance with this chapter and with rules and regulations promulgated by the director ~~of-the-department-of-agriculture~~.

(2) The cost of controlling noxious weeds shall be the obligation of the landowner.

(3) Noxious ~~w~~Weed control must be for prevention, ~~or~~ eradication ~~unless-the-provisions-of-section-22-2480,-Idaho-Code,-apply~~ or restoration. However, areas may be modified from the eradication requirement after the director has determined them to be unreasonable for short-term eradication and has designated the area as a special management zone.

(4) The landowner shall reimburse the county control authority

for work done because of failure to comply with a five (5) day notice, as outlined in section 22-2405, Idaho Code.

(5) If an article is infested with noxious weeds, it shall not be moved from designated premises until it is treated in accordance with the applicable regulations, or in accordance with the written permission of a control authority.

SECTION 11. That Section 22-2481, Idaho Code, be, and the same is hereby amended to read as follows:

22-24~~01~~08. ~~APPEALS BY AGGRIEVED--PERSONS~~ LANDOWNER AND CITIZEN POWERS. (1) If any person shall be dissatisfied with the amount of any charge made against it by a county control authority for control work or for the purchase of materials or use of equipment, he may, within thirty (30) days after being advised of the amount of the charge, file a protest with the director.

(2) If any person shall be dissatisfied with the control measures used or the manner in which control is conducted upon his property, he may, within thirty (30) days file a protest with the director.

(3) Any person served with an individual notice may, within two (2) days of receipt of the notice, appeal to the board of county commissioners. A hearing shall be set by the board of county commissioners within five (5) days after receipt of notice of the appeal. Notice of the hearing shall be sent by the board of county commissioners to the appellant.

(4) Other than the procedures specifically set out in this chapter, procedures for hearings thereon and appeals pertaining to this chapter shall be as provided in chapter 52, title 67, Idaho Code.

SECTION 12. That Section 22-2488, Idaho Code, be, and the same is hereby amended to read as follows:

22-24~~08~~09. VIOLATIONS -- PENALTIES. (1) Any person knowing of the existence of any noxious weeds on lands owned or controlled by him, who fails to control such weeds in accordance with this chapter ~~and~~ or any person who intrudes upon any land under quarantine or who moves or causes to be moved any article covered by this chapter except as provided or who prevents or threatens to prevent entry upon land as provided in this chapter, or who interferes with the carrying out of the provisions of this chapter or who violates any of the provisions of this chapter, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one thousand dollars ($1,000) or up to one (1) year in jail or both such fine and imprisonment for each violation.

(2) ~~Each--member-of-a-control-authority,-and-any-county-weed-control-superintendent,-who-shall-fail-and-refuse-to-perform--the--duties required--of--him-by-this-chapter-and-rules-and-regulations-thereunder shall-be-subject-to-a-civil-fine-not-to-exceed--five--hundred--dollars ($500)--for--each--violation.~~ The director or a control authority may bring an action to enforce the provisions of this chapter, and the penalty provided for under this section.

~~(3)--Control--authorities--and-law-enforcement-officers-are-authorized-to-cite-persons-for-any-violation--of--the--provisions--of--this chapter.~~

~~(4)--A--county-weed-advisory-committee-shall-be-a-political-subdivision-within-the-meaning-of-section-6-902,-Idaho-Code.~~

SECTION 13. That Section 22-2484, Idaho Code, be, and the same is hereby amended to read as follows:

22-248~~4~~10. WEED CONTROL ADVISORY COMMITTEES. (1) ~~The-county--commissioners--in--each--county~~ Control authorities may appoint ~~a-county~~ persons to a weed control advisory committee, ~~consisting-of--not--less than--five--(5)-members,~~ who shall be persons knowledgeable of noxious weeds and the damage done by such weeds. The members of the ~~county~~ advisory committee shall be appointed for renewable terms of two (2) years.

(2) It shall be the ~~duty--and--responsibility~~ function of each ~~county~~ weed control advisory committee to:

(a) ~~A~~assist ~~the-county-commissioners-and-the-county-weed-superintendent-in-carrying-out-the~~ in planning and ~~implementation-of~~ carrying out noxious weed control programs~~,~~; and

(b) ~~to-a~~Act as liaison to other ~~county~~ weed control advisory committees~~,~~; and

(c) ~~to--p~~Provide a forum for public input on matters relating to the control of noxious weeds.

(3) Members of the ~~county~~ advisory committee may be reimbursed for actual and necessary expenses when on committee business. ~~All e~~Expense payments ~~shall~~ may be made from the noxious weed fund.

(4) Advisory committees have no executive powers and act in an advisory capacity only.

SECTION 14. That Sections 22-2477, 22-2478, 22-2479, 22-2480, 22-2485 and 22-2486, Idaho Code, be, and the same are hereby repealed.

Approved March 29, 1993.

CHAPTER 248
(H.B. No. 134)

AN ACT

RELATING TO THE NUMBER OF DISTRICT JUDGES IN THE FOURTH, FIFTH AND SEVENTH JUDICIAL DISTRICTS; AMENDING SECTION 1-805, IDAHO CODE, TO PROVIDE THAT THE FOURTH JUDICIAL DISTRICT SHALL HAVE EIGHT DISTRICT JUDGES AND TO CORRECT A SPELLING ERROR; AMENDING SECTION 1-806, IDAHO CODE, TO PROVIDE THAT THE FIFTH JUDICIAL DISTRICT SHALL HAVE SEVEN DISTRICT JUDGES; AMENDING SECTION 1-808, IDAHO CODE, TO PROVIDE THAT THE SEVENTH JUDICIAL DISTRICT SHALL HAVE FIVE DISTRICT JUDGES; AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 1-805, Idaho Code, be, and the same is hereby amended to read as follows:

1-805. FOURTH DISTRICT -- NUMBER OF JUDGES -- RESIDENT CHAMBERS. (1) The fourth judicial district shall consist of the counties of Valley, Boise, Ada and Elmore.

(2) The fourth judicial district shall have ~~seven~~ eight (~~7~~8) district judges.

(3) Resident chambers of the district judges of the fourth judicial district shall be established as follows:

(a) ~~Six~~ Seven (~~6~~7) resident chambers shall be established in Ada County;

(b) One (1) resident chambers shall be established in Ada or Elmore County.

SECTION 2. That Section 1-806, Idaho Code, be, and the same is hereby amended to read as follows:

1-806. FIFTH DISTRICT -- NUMBER OF JUDGES -- RESIDENT CHAMBERS. (1) The fifth judicial district shall consist of the counties of Blaine, Camas, Gooding, Lincoln, Jerome, Minidoka, Cassia and Twin Falls.

(2) The fifth judicial district shall have ~~six~~ seven (~~6~~7) district judges.

(3) Resident chambers of the district judges of the fifth judicial district shall be established as follows:

(a) One (1) resident chambers shall be established in Blaine County;

(b) One (1) resident chambers shall be established in Minidoka County;

(c) ~~Two~~ Three (~~2~~3) resident chambers shall be established in Twin Falls County;

(d) One (1) resident chambers shall be established in Cassia County;

(e) One (1) resident chambers shall be established in Gooding or Jerome County.

SECTION 3. That Section 1-808, Idaho Code, be, and the same is hereby amended to read as follows:

1-808. SEVENTH DISTRICT -- NUMBER OF JUDGES -- RESIDENT CHAMBERS. (1) The seventh judicial district shall consist of the counties of Lemhi, Custer, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville and Bingham.

(2) The seventh judicial district shall have ~~four~~ five (~~4~~5) district judges.

(3) Resident chambers of the district judges of the seventh judicial district shall be established as follows:

(a) One (1) resident chambers shall be established in Madison County;

(b) One (1) resident chambers shall be established in Bingham County;

(c) ~~Two~~ Three (~~2~~3) resident chambers shall be established in Bonneville County.

SECTION 4. Section 2 of this act shall be in full force and effect on and after July 1, 1993. Sections 1 and 3 of this act shall be in full force and effect on and after March 1, 1995.

Approved March 29, 1993.